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The Solicitors' Journal

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Current Topics.

Liability for Church Repairs.

A NEW TERROR to landowners was revealed in the unreported case of *Horn* v. *Andrews and Others*, a settlement of which was announced before Mr. Justice SHEARMAN on the 13th January last. In 1907 the plaintiff bought a piece of land in the Parish of Bourne, Lincolnshire. In 1926 the churchwardens and the Parochial Church Council instituted proceedings against the plaintiff and the owner of another portion of the land, in order to enforce payment of £300 for repairing the roof of the chancel of the Parish Church—on the ground that they were the last known lay impropriators. The plaintiff later obtained a writ of prohibition to stay proceedings in the Consistory Court, pending the trial at Lincoln Assizes (by a judge and jury) of an issue of custom raised by the plaintiff. The issue was never submitted to a jury, however, as the plaintiff and his co-owners of the land agreed to pay £300 towards the repair of the chancel roof, and to contribute £120 to the Diocesan Trust Fund. The source of this liability is the Ecclesiastical Dilapidations Measure, 1923, s. 52 (2), of which states : "Any person (other than such an incumbent as aforesaid) who is liable as rector or otherwise for the repair of the chancel of a church may, after consultation with the Parochial Church Council (if any) of the parish concerned, and with the approval of the Board, compound such liability by payment to the Diocesan Authority of such a sum as . . . the Authority may estimate as reasonably sufficient to provide for the cost of future repairs, for which such person would otherwise have been liable." This far-reaching provision presupposes liability in a layman, who will probably dispute the fact. If the incumbent is a rector, the benefice has been appropriated to a spiritual corporation, which body or individual remains liable. If the incumbent is a vicar, the benefice may be impropriate. The Consistory Court can exercise discipline over a lay rector or impropriator for non-repair of the chancel, but he can retaliate by claiming the chief seat therein.

Jurors' Afterthoughts.

THE RECENT memorial of some of the jurors in the Cardiff case against carrying out the sentence of death, which was the direct result of their own verdict, is perhaps partly a symptom of the increasing feeling against capital punishment. By a not unnatural reaction people directly concerned in the infliction of the death penalty, other perhaps than the executioner himself, who, if he is to remain sane, must learn to treat his dreadful business as business only, are frequently to be found amongst those who would abolish capital punishment. There are some striking passages, for instance, in Major BLAKE'S book "Quod," voicing the feelings of a humane prison governor upon the subject. *The Times* says that the practice of jurors commenting upon the trial in which they have taken part "strikes at the very root of trial by jury." If that be so, and it is certainly, from every point of view, an undesirable course of action, the question is worth examination, why such after-comment is, in practice, confined to trials for murder ending in a death sentence. Is it not an outcome of the deliberate working up of sensation by a press which first laments over the victim and then becomes maudlin over the murderer ? May not the abolition of capital punishment be a reasonable price to pay for the checking of this horrible sensation-mongering ? We certainly cannot afford to have the jury system utterly discredited, for the jury, under proper judicial control, is an efficient body where the issues to be tried are matters of life or liberty. We cannot go so far as Lord HEWART in praise of the "inestimable value" of a verdict dependent upon unanimity, for it is common sense to realise that unanimity can be arrived at by a multitude of dubious roads, nor are we prepared to suppose with *The Times*' leader-writer that "the confidence which the public rightly has in criminal verdicts" is to be fatally shaken by learning how some of them are arrived at. If that confidence depends on the supposition of some mystic efficacy resident in the jury, it is already hopelessly misplaced ; it is justified only by experience having shown that this particular device for doing justice is less imperfect than all others tried in English history. But we agree that the afterthoughts of the jury are best left in obscurity. Of their communication to the public, especially through the less conscientious journalist, we say, with our great leading journal, "It is desirable, and even necessary, that this abuse should be checked."

Roe *v.* Russell.

A GREAT MANY persons will undoubtedly be surprised at the conclusion at which the Court of Appeal arrived at in *Roe* v. *Russell* (*Times*, 31st ult.) (a case which we considered in 71 Sol. J. 999) that a statutory tenant is entitled to sub-let part of the premises held by him, and that consequently no action for possession can be brought on that ground alone against the sub-lessee of such statutory tenant. The decision

of the Court of Appeal is therefore to be regarded as complementary to the decision of the Divisional Court in *Campbell* v. *Lill*, 43 T.L.R. 397, which was to the effect that no order of possession could be made on that ground alone against the statutory tenant himself. From SCRUTTON, L. J.'s judgment in *Roe* v. *Russell* it will be found that the decision is almost entirely founded on the provisions of s. 4 (1) (*h*) of the Rent and Mortgage Interest (Restrictions) Act, 1923, which is to the effect that an order for possession may be made where the tenant, without the consent of the landlord, has at any time after the 31st July, 1923, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let. The Court of Appeal argued that this provision goes to show that Parliament intended that the statutory tenant should have the power of disposing of his interest in the premises, at any rate by sub-letting a part thereof. The Court of Appeal disposed of the view taken in *Keeves* v. *Dean*, 1924 1 K.B. 685; 68, Sol. J. 321, to the effect that the right of assignment or sub-letting could not be regarded as a "term or condition of the original contract of tenancy," by pointing out that proceedings in that case were commenced prior to the passing of the Rent and Mortgage Interest (Restriction) Act, 1923, and that therefore the provisions of s. 4 (1) (*h*) of that Act did not apply to and were not even considered in that case, and further that the question as to whether the statutory tenant had power to sub-let the whole or part of the premises was expressly left open there. In previous issues, we strongly maintained the view that statutory tenants had no power to sub-let, a consequence which appeared and still appears to us necessarily to follow from the reasoning in *Keeves v. Dean*, with which decision, it appears to us, *Roe v. Russell* cannot be reconciled. In view of the great conflict of opinion on the point and of the interests involved, it is to be hoped that the matter will be ultimately carried to the House of Lords.

Servants' Registry Offices.

IN A RECENT case, where a domestic servant who had been convicted of various offences had obtained employment through a servants' registry office or employment agency, and had then robbed her master and mistress and absconded, the magistrate severely criticised the action of the agency in the matter. His criticism raises the question of the responsibility of such an agency, a matter on which there is surprisingly little authority, considering the number of dishonest servants who must have deceived both agent and prospective employer in this way. It was held in a Scottish case, as might be expected, that a communication as to a servant's character, addressed by a former mistress to the person controlling the agency, was privileged: see *Farquhar* v. *Neish*, 1890, 17 R. 716. Such agencies are also in London subject to the requirement of registration with the county council: see L.C.C. (General Powers) Act, 1910, ss. 20-28, and in other places where Pt. VII of the Public Health (Amendment) Act, 1907, has been adopted, see s. 85. These provisions, however, are not directed to the protection of employers, but of servants, and especially to prevent the establishment of bogus agencies by white slave traffickers. Possibly, if a number of employers complained of being robbed by servants hired through a particular agency, the London County Council might refuse to renew the licence under s. 22 of the Act of 1910, on the ground that the person in charge was not a suitable person, or that it had been improperly conducted, but the point has not been raised in the few cases of appeal under the section. No doubt an agent knowingly introducing a dishonest servant would be civilly and perhaps criminally responsible. In the ordinary case, however, an agent, like an employer, is deceived by a false character. Has, then, the agent any and what duty of care to verify the character, or is the mere introduction sufficient, leaving the prospective employer to verify the references, which of course he can always do? The fact that a prudent employer can and does verify a reference rather points to the latter view. A judge would probably require evidence of custom, and of course an agency might hold out that the servants on its books were honest as an inducement to customers.

Dangers Adjoining Highways.

IT IS WELL settled that if the owner of land adjoining a public highway makes on his land an excavation or other danger so close to the highway as to interfere with the safety of those passing and repassing, he will be held liable if injury is in fact occasioned to a person by reason of the excavation or other danger, even though the injury cannot happen except by the accidental deviation from the highway and resulting trespass on the adjoining land. This was decided in the well-known case of *Barnes* v. *Ward*, 1850, 9 C.B. 392. Is the legal position the same if the excavation or other danger was in existence at the time the highway was made? This was considered in *Fisher* v. *Prowse*, 1862, 2 B. & S. 770, where BLACKBURN, J., laid it down that where an excavation, not otherwise unlawful, exists when the land on which it exists, or to which it is immediately contiguous, is dedicated to the public as a way, the owner of the land on which the excavation or other danger exists is not liable in the event of some one straying from the highway and sustaining injury thereby. The dedication of the highway must, as he said, be taken to be made to the public, and accepted by them, subject to the inconvenience or risk arising from the existing state of things. In the recent Scottish case of *Morrison* v. *London, Midland & Scottish Rly. Co.*, 1928, S.L.T. 77, the law on the subject was again considered, the specific question there being whether a landowner is bound to fence a natural danger on his property which is in proximity to a public road. Owing to a gap in a fence the plaintiff, on a dark night, strayed from the road and fell into a natural stream. In the course of his judgment the Lord Ordinary said that in all the cases, both in England and Scotland, for enforcing liability against landowners for failing to fence dangerous places adjoining a public highway, the danger was either created or aggravated by an act of the owner or his predecessor—such as the diversion of a footpath, or the excavation of a hole, and were not concerned with natural dangers. With regard to dangers of the latter class he held that there was no legal obligation on a landowner to fence them. In an earlier Scottish case one of the judges said that he could see "no difference in principle between danger arising from artificial and from natural causes," but this view has found no support in later decisions, and cannot be accepted as good law.

The Defence of Drunkenness: A Point of Evidence.

IN A RECENT case in a metropolitan police court, where a man was accused of larceny, he set up the defence that he was too drunk at the time to form a felonious intent, and the foolish way in which he appropriated certain articles in a restaurant supported this view of what happened. He had previously been convicted of drunkenness and of an assault, while drunk, upon a police officer; and the question arises whether this could have been given in evidence for the defence. Where a person is charged with a crime, the fact that he formerly committed another of the same sort and had a tendency to commit such crimes is not permitted to be given in evidence. Here evidence of the committing a previous offence of drunkenness was wanted to show that he had a tendency to get drunk, and so strengthen the probability that he was drunk on the particular occasion in question. The evidence seems to be admissible. Further, the fact that the accused had assaulted a constable would appear to be admissible as tending to show that he was liable when drunk to do foolish acts.

Wife's Right to Maintenance.

FOLLOWING UPON our article at p. 59, *ante*, it is interesting to learn that in another recent instance the Divorce Division

has sent a case back to justices "to be determined on its merits," where there has been a failure to pay under a separation agreement, with an intimation that if the justices find that the husband has failed to pay the allowance contracted for by the agreement, they should make an order at least equivalent in amount. This judgment (*McCreaney* v. *McCreaney*, 18th January), goes far to establish the wide proposition which may be deduced from *Dewe* v. *Dewe*. There should be an interesting argument in the Court of Appeal, if and when the latter case arrives there.

Control of Dogs at Night.

Householders who are in the habit of taking their dogs for a run before retiring to rest may be disagreeably surprised to be summoned for not having the animal on leash after dark. The process by which this has become an offence is as follows: The Diseases of Animals Act, 1894, s. 22, empowers the Board of Agriculture to make orders: (31) for prescribing and regulating the seizure, detention and disposal of stray dogs . . . and of dogs not being kept under control. Statutory orders have been made for various counties in different years, entitled "——shire (Control of Dogs) Order, 19—." A typical sub-heading is: "Regulation with regard to sheep-worrying." Then come provisions such as the following: "Between one hour after sunset and one hour before sunrise every dog in the —— of —— shall be (1) confined in a dwelling-house, kennel, or yard; or (2) secured by a collar and chain; or (3) accompanied by the owner or some one deputed by him and under effectual control." The summons is usually silent as to sheep-worrying, and the reason for the regulation may be only revealed after a laborious search. The above orders are, of course, in force in the suburbs of towns, as the latter necessarily form part of some county. The origin of the orders seems to have been overlooked, however, as they are being enforced in order to prevent, not sheep-worrying—but accidents to motorists! This appears to be a misuse of the powers under the above Orders. Objection should therefore be taken to the jurisdiction of the court, if the alleged offence occurred late at night in a populous suburb, miles away from any sheep, or any fields or markets where sheep might be found. On the merits it should be pointed out that there is no obligation to have a dog on leash, and that it is "under effectual control" if it comes to heel when called.

"Texts" in Libel and Slander Actions.

Mr. Justice Sankey, in a case at the last Northampton Assizes, asked if there was anything in the constitution of a certain religious body which permitted the settlement of slander actions. On being handed a book of the constitution, his lordship read the following: "One member trespassed against by another must not complain of the offender to an official meeting until he has treated him as required in Matthew, chap. 18, verses 15 and 16, and has failed thereby to gain the offender." The learned judge observed that had that admirable rule been observed, the jury might have been saved some trouble in the case. The case was eventually settled by an apology and payment of damages to the plaintiffs—a minister and a member of the congregation. In a libel case at Birmingham Assizes last year, however, before Mr. Justice McCardie, a reference to a text had given rise to the action. A member of a religious body, having entered into a controversy with the elders, was excluded for the reasons set out by St. Paul in I Corinthians, chap. 5, verse 11: "But now I have written unto you not to keep company, if any man that is called a brother be . . . a railer . . .; with such a one no, not to eat." In their communication to other churches the elders overlooked the fact that, besides railing, the text specifies other offences of a much more serious nature. The recipients of the communication inferred that the plaintiff had been guilty of some of the latter, and treated him accordingly. That action also was settled on terms favourable to the plaintiff.

The Evasion of Super-Tax.

In *Blott's Case*, 1921, 2 A.C. 171, the House of Lords, by a majority, decided that a shareholder in a company which had, in exercise of a power already contained in its articles, passed a resolution declaring that out of its undivided profits a bonus should be paid to its shareholders and authorising in satisfaction of that bonus a distribution of certain unissued but fully paid-up shares, was not assessable to super-tax in respect of the shares allotted to him in pursuance of that resolution. In other words, the House decided that such shares were not part of the shareholder's "total *income* from all sources," within the meaning of s. 66 of the Finance (1909–10) Act, 1910. The anticipated effect of such a decision was, however, ineffectively prevented by s. 21 of the Finance Act, 1922, which enables the Special Commissioners to treat what ought to have been done as already done:—

> ". . . where it appears to the Special Commissioners that any company to which this section applies has not, within a reasonable time after the end of any year . . . distributed to its members *in such manner as to render the amount distributed liable to be included in the statements to be made by the members . . . of their total income for the purposes of super-tax*, a reasonable part of its actual income from all sources for the said year . . . , the Commissioners may . . . direct that . . . the said income of the company shall . . . be deemed to be the income of the members, and the amount thereof shall be apportioned among the members."

It is further enacted that the member may elect to pay or not to pay the super-tax chargeable under this section, and that if he does elect to pay he shall not be denied the right to recover from the company the amount so paid.

The section, however, does *not* apply to any company—

(*a*) which was registered before 5th April, 1914; and

(*b*) in which the number of shareholders is more than fifty; and

(*c*) which has not issued any of its shares as a result of a public invitation to subscribe for shares; and

(*d*) which is under the control of more than five persons,

In other words, the section is aimed at companies controlled by a few persons who hold the bulk of the shares and who use their company as a shield against the payment of super-tax. But it was not until 1927 that the aim of the section was effectively secured. For it was too manifestly easy for such persons to add to their number or to make a public invitation calculated to attract no member of the public—or otherwise to bring their company outside the scope of the section.

And now, by s. 31 of the Finance Act, 1927:—

> "This section (i.e., s. 21 of the Finance Act, 1922) shall apply to *any* company which is under the control of not more than five persons *and* which is not a subsidiary company or a company in which the public are substantially interested."

The section, however, is not retrospective in its operation and it is understood that companies which are now within its scope are contemplating and executing schemes for the distribution, as capital and not as income, of profits earned and accumulated before 29th July, 1927—the date of the passing of the Finance Act, 1927. And it would seem that there is no reason to doubt that such schemes will successfully achieve the desired evasion.

If, however, it is necessary to capitalise the profits before making the distribution and especially if it is also necessary to include in the articles a power to capitalise, then it may be prudent to allow a reasonable interval of time to elapse between the passing of the resolution or resolutions to capitalise and the subsequent resolution to distribute.

Further, the distribution may be more conveniently made as a reduction of the paid-up capital (without any leave of the court, under s. 40 of the Companies Act) than as an allotment of new shares.

A Husband's Claim for the Death of his Wife or Child.

LET us first picture a client, dressed in black and obviously under emotion, who calls at our office and unfolds a tale, the outline of which is as follows :—

He is a young man earning £5 a week as a clerk ; until a week ago he had a wife and three children ; a week ago his wife took the youngest, aged two, out in a perambulator and while wheeling it along a suburban road was run over by a Rolls-Royce car driven by a chauffeur in the employ of the local M.P., a city magnate, earning many thousands a year. Both wife and child were killed. The driver was travelling at an excessive speed to get to town to take his mistress from a fashionable garden party, she having been bored stiff by the company there. The mistress had rung him up on the telephone to come as fast as he could ; he had, and the death of the wife and child was the result. The husband has attended the inquest and the jury have found the driver guilty of negligence. The husband has had to pay £30 to the undertakers to bury his wife and child. He has two children left, aged three and five years, and he is obliged to employ a woman to look after them while he is at work. He has written to the local M.P. and his letter has been ignored. He is prepared to embark his savings in an action to recover damages and wants to know what are his chances of success.

Although this is an entirely hypothetical case, it is just the set of circumstances that a solicitor has frequently to consider nowadays. In order not to give readers the impression that this article is the work of a Bolshevist agitator, I will suppose that the M.P. is a dear old gentleman, who would do something if he could to keep his good name in his constituency, but he is insured, and one of the conditions of his insurance is that he shall let no claimant know he is insured. The insurance company in a general sort of way sympathise with the husband, but they are advised that he has no cause of action, and they have to consider their shareholders' interests and cannot be expected to pay the husband damages to which he is not entitled. Should the husband be advised to sue ?

With regard to the claim for the death of the child, the answer given to the sorrowing husband must plainly be, " You will not get a penny." With regard to the wife, " You may get something if you can prove she earned wages which she brought to the home ; if she helped you in business in any way, you may recover damages in respect of that ; and as you have two young children to look after and are put to the expense of employing someone to nurse them, you are entitled to damages to cover that expense. The defendant is, however, unlucky in that he did not run over and kill your wife and your three children. If he had there would have been no children to look after and he would not have to pay in respect of the woman or relative you now have to employ. If your wife had been an immoral woman who had run off and gone to live in adultery with the defendant, you could have obtained substantial damages in a divorce suit, but as she was a good, hard-working wife whom the defendant has killed outright, it is improbable that you will get very much. You will certainly get nothing for doctor's fees or funeral expenses, or for your loss of work." The opinion need not be expressed in terms so bald, but that is what it must amount to.

A father who has had the misfortune—or, perhaps one might say, having regard to the way in which he has looked after his daughter, the inevitable experience—of his daughter being seduced, may obtain exemplary damages against the seducer upon the fiction that during the time his daughter has been confined, he, the father, has lost her services notwithstanding that the services never amounted to more than making a cup of tea or darning a pair of socks. If his daughter is a hardworking girl who is killed outright by an accident due to the negligence of someone the father can claim only the amount which the daughter brought in for the upkeep of the home, which is not usually very much, and nothing in respect of doctor's fees or funeral expenses. If the father is so shaken by the sudden death of his child that he is too ill to go to work, he can claim nothing for loss of wages.

It is well known that prior to 1846 the only person who could bring an action for personal injury was the person who was injured. Under the application of the rule " *actio personalis moritur cum persona*," if the injured party were killed outright before there was time to serve a writ, the right of action was gone, and no one else could bring the action. As Lord ELLENBOROUGH stated in *Baker* v. *Bolton*, 1 Camp. 493 : " In a civil court, the death of a human being could not be complained of as an injury ; and in this case the damages as to the plaintiff's wife must stop with the period of her existence."

The reasons for such a rule have never been clear. " Beven on Negligence," 3rd ed., vol. I, p. 182, suggests that the reason arose out of the condition of labour in serfdom prior to the visitation of the Black Death. The rule, shortly stated, was that " wrongful death which causes a damage gives no action, because it is death which causes it " (*Osborn* v. *Gillett*, 1878, L.R. 8 Ex. 88, at p. 98, also *White* v. *Spettigue*, 13 M. & W. 603), and " the cause of action for injuries to the person dies with the person injured, and it follows as a necessary consequence that, the cause of action having itself abated, no separate action can be maintained for such damages as are exclusively consequential." In 1844 a railway company making a deep cutting through rock provided the navvies with dynamite sticks which were to be rammed home in the charge holes with steel rods. One of the navvies, as must have inevitably happened sooner or later, struck a flint with his steel rod which caused a spark and an explosion. The shattered bodies of some dozen workmen were laid out dying in a disused truck, and by the time the doctor came the victims of the company's negligence had passed away and their rights of action against the company had passed away with them. Before a Commission appointed about the same time, it was stated that a railway company did not employ a medical man where large gangs were employed on dangerous work, because if the men injured subsequently died the company was saved a good deal of expense and litigation. As students we were taught to believe that Lord Campbell's Act, 1846, 9 & 10 Vict., c. 93, had remedied all that. When one looks at what damages the husband can claim if his wife is taken away from him by the tortious action of another, we are prompted to say that the Act of 1846 does very little.

The Act recites : " Whereas no action at law is now maintainable against a person who, by his wrongful act, neglect, or default may have caused the death of another person, and it is ofttimes right and expedient that the wrongdoer in such case shall be answerable in damages for the injury so caused by him . . . Be it therefore enacted "—and s. 2 provides " In every such action the jury may give such damages as they may think proportional to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought."

If we were reading the Act for the first time, we should be expected to think that in respect of the infant child that has been killed our client would be entitled to claim what the child could have claimed had he lived. Such is clearly not the case. The defendant is not called upon to pay damages assessed according to what he would have had to pay had the child survived, and had to walk about for the rest of his life with a shortened leg, or minus an eye. His life is regarded as having been suddenly snuffed out by a perfectly painless process, just as a cinematograph film suddenly snaps in the middle, and one is left to speculate what the end of the story might have been if there had been no accident at all. Where the father can prove that the child was earning wages or that he, the father, had a reasonable expectation of pecuniary benefit

from the continuance of the life of the deceased, he is entitled to recover damages assessed by a jury to that extent, but only to that extent. He gets nothing as solatium for his feelings, or for expenses of the burial. The following decisions will give some idea as to the measure of damages:—*Osborn* v. *Gillett*, *ante*, young daughter run over by a waggon, no damages; *Clark* v. *London General Omnibus Co.*, 1906, 2 K.B., p. 651, daughter aged twelve, riding a bicycle, run over by an omnibus, no damages; *Holleran* v. *Bagnell*, 1879, 6 L.R. Ir. 333, daughter aged seven, doing slight household duties, struck by a stone in an explosion, £110 awarded by jury at assizes, judgment for defendant on appeal; *Bramall* v. *Lees*, 29 L.T. (O.S.) 111, child twelve years, £12 damages; *Wolfe* v. *Great Northern Rly.*, 1890, 26 L.R. Ir. 548, daughter aged ten who did work of servant, £150, which the Irish Court of Appeal reduced to £50; *Taff Vale Rly. Co.* v. *Jenkins*, 1913, A.C. 1, daughter aged sixteen, a dressmaker's apprentice with a prospect of earning £2 a week, killed in a railway accident, £75 damages. In the last-mentioned case the House of Lords went as far as to say that it is not a condition precedent to the maintenance of an action that the deceased should have been actually earning money or money's worth or contributing to the support of the plaintiff at or before the date of the death, provided that the plaintiff had a reasonable expectation of pecuniary benefit from the continuance of life. It will be noticed that a father is less likely to obtain damages for the loss of a son than for a daughter, because a son would have been less likely to do any work in the home, and his education would most likely have been a greater expense. Moreover, if the plaintiff is rich (unlike the anomaly in assessing damages for seduction where the poor man cannot succeed because his daughter has gone out to work, while the rich man has a good cause of action because he has lost the services of his daughter, whom he could afford to keep at home), he is less likely to prove he has suffered damage by the loss of his son, because, having regard to his circumstances, the son is less likely to contribute to the upkeep of the home. (See the judgment of McCardie, J., in *Barnett* v. *Cohen*, 1921, 2 K.B. 461; son aged four years, father earning £1,000 a year, no damages for pecuniary loss awarded and nothing allowed for costs of a Jewish funeral). Our hypothetical case first stated is on all fours with *Barnett* v. *Cohen*, as regards the child, and our client can obviously get nothing in respect of his death. What about his wife? There the same principles apply, save that in respect of the loss of a wife the man can recover damages in respect not only of the wages which the wife earned, but also of the expenses, other than doctor's fees and funeral expenses, to which the husband is put by reason of her death. The case which best illustrates this is *Berry* v. *Humm & Co.*, 1915, 1 K.B. 627. There the husband was a workman earning 38s. a week, and his wife performed the ordinary household duties of a woman in her position, and in consequence of her death the plaintiff had to employ a housekeeper and incur extra expense of management by the housekeeper instead of by the deceased wife. The jury assessed the plaintiff damages at £50, £35 for loss of services and £15 for expenses of management, but no mention was made of doctor's fees or funeral expenses.

So far, all the cases cited have been cases framed in tort made possible under Lord Campbell's Act. But quite apart from the Fatal Accidents Act, 1846, there is a line of cases based on breach of warranty. The leading case on this type of action is *Jackson* v. *Watson & Sons*, 1909, 2 K.B. 193. There the wife died from eating tinned salmon bought at the defendants' shop. She left a family of seven children and the husband had had to employ a woman and was put to expense as a result of his wife's death, in having the children cared for. A jury awarded the husband £233 16s. which was made up of £4 3s. for medical expenses, £29 13s. funeral expenses and £200 for loss of the wife's services. The defendants did not appeal against the £4 3s. medical expenses, nor the £29 13s. funeral expenses, but only against the £200 pecuniary loss. The Court of Appeal held that the death of the plaintiff's wife not forming an essential part of the cause of action sued upon, but only an element in ascertaining the damages arising therefrom, there was no rule which prevented such damages for loss of the wife's household services being recoverable. The Court of Appeal was not asked to consider the question of medical and funeral expenses, and it appears that, in an action based on breach of warranty, these items are recoverable and are not subject to the rule laid down, on grounds that are not apparent, in *Osborn* v. *Gillett* and *Clark* v. *London General Omnibus Co.*, which makes them irrecoverable in actions of pure tort.

Summary Jurisdiction *in Camerâ*.

The recent hearing of a summons under the Police Property Act, 1897, at the Bow-street Police Court, where the proceedings were conducted *in camerâ*, raised a point of great public interest—the question whether, apart from statutory authority, a court of summary jurisdiction can lawfully, in any circumstances whatever, conduct a trial with closed doors.

The complainant sought to recover a number of documents which came into the possession of the police upon his arrest last March on charges under the Official Secrets Acts, charges which, "on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety" (s. 8 (4) of the Official Secrets Act, 1920), were tried *in camerâ*. The same considerations which made it desirable that the original matter should not be dealt with in public applied to the hearing of a claim to the possession of the documents which were part of the evidence in the case.

Uncontradicted evidence was before the magistrate to this effect, and although it seems a strong measure to hold a secret trial in a court which is the creature of statute and subject to an express statutory direction that it shall not try, determine or adjudge any case "except when sitting in open court" (Summary Jurisdiction Act, 1879, s. 20 (4)), he felt constrained to act upon the arguments adduced to him that he had power to exclude the public from the hearing.

In a convincing judgment, fully reported in *The Times* of the 26th January, Mr. Fry gave his reasons for acting as he did, but he took care to add: "It is with considerable reluctance that I agree in the particular circumstances of a particular case to make what, at first sight, appears to be an inroad upon the inveterate rule of publicity for summary courts which, for nearly eighty years, Parliament has enjoined and the judiciary enforced."

His decision was undoubtedly correct.

The great leading case of *Scott* v. *Scott*, 1913, A.C. 417; 57 Sol. J. 498; 29 T.L.R. 520, which reasserted the principle, theretofore somewhat broken in upon, that the courts of this country must administer justice in public, allowed certain exceptions, themselves referable to an even more fundamental principle that justice must be done, and, consequently, sanctioned the doing of justice *in camerâ*, if a public hearing would defeat the doing of justice.

The exception, having to be expressed broadly, is in danger of abuse, and it is gratifying to find the care and caution with which it has in the present instance been applied.

Two questions had to be settled by the magistrate, one being whether the particular matter came within the exception allowed in *Scott* v. *Scott*, the other whether that exception, based upon common law, had any application to the police court.

Upon the first there could be no hesitation. There was evidence that the matters to be treated touched the safety of the realm. It would, indeed, have been absurd to give away, in subsidiary proceedings, secrets carefully guarded in

the main trial. The fact that an Act of Parliament expressly dealing with such cases gives power to hear them *in camerâ* is very cogent. An Act dealing with one subject is, of course, not a direct authority as to matters arising under another Act, but it may be very much in point when the question is being considered into what category a particular matter shall fall, whether it is one fit to be tried in public or not.

Upon the second point, whether a police court is a court to which the common law rule as to open court, and the exceptions to that rule, should apply, it is, first, to be observed, not only that courts of summary jurisdiction, although creatures of statute, have to administer both common as well as statute law, but that much of their procedure, although statutory in form, is modelled on the common law procedure of the more august tribunals. Some parts of the procedure, indeed, are not prescribed by statute at all, or, if they are, are prescribed by statutes which apply equally to all courts. It is, for instance, laid down by the Summary Jurisdiction Act, 1848, that all witnesses shall be examined upon oath, but no form of oath is prescribed. Since the Oaths Act, 1909, that is fixed by a statute of general application; before 1909 the form was one of ancient practice, copied from the superior courts. The rule that a corporation can appear only by counsel or solicitor, though it is applied in courts of summary jurisdiction, is not a rule of summary jurisdiction, but one laid down by judicial decision in High Court cases, primarily as to High Court procedure.

But, apart from these general considerations, the cases seem conclusive. The learned magistrate quoted from *D.* v. *D.*, 1903, P. 144; 47 Sol. J., 419, Sir Francis Jeune's statement that the general principle permitting the exception applied to *all* courts, a statement which, in *Scott* v. *Scott*, was with due reservations, accepted by Lord Haldane.

In *Norman* v. *Matthews*, 1916, 85 L.J., K.B. 857; 32 T.L.R. 303, not only was it held that a county court had inherent powers, in proper circumstances, to hear cases *in camerâ*, but the judgment is reported as expressing in general terms that a court has such power.

In *R.* v. *Lewes Prison Governor*, 1917, 2 K.B. 254; 33 T.L.R. 222, it was held that there is inherent jurisdiction in every court to exclude the public from a trial if such exclusion be necessary for the administration of justice—a decision emphasised by the fact that in the particular case a general court martial, in so acting, was going directly contrary to its own rules of procedure made under the Army Act.

Consideration of these cases alone should satisfy everyone that Mr. Fry was right in concluding that police courts are neither "too humble" nor "too powerful to be affected by those considerations of common law and common sense which every other court of justice in this country has acknowledged"; yet everyone will approve the caution against the proposition "that a summary court may lightly, or upon a notion that justice may more conveniently or decently be done in private, close its doors to the public," and his sturdy declaration that "without the protection of complete publicity justice cannot properly be done."

TEMPERANCE PERMANENT BUILDING SOCIETY.

The directors of the Temperance Permanent Building Society of 4, 6 and 8 Ludgate Hill, E.C.4, announce the results of another year of successful and increasing business, the amount advanced on house and shop property being £772,000, bringing the Mortgage Asset up to close upon £3,000,000.

The share capital now amounts to £2,310,000, an increase of £450,000.

The total assets of the society are stated now to stand at £3,268,500, showing an increase of £490,000.

An addition of £34,500 has been made to the reserve fund which now stands at £364,000, which is described as the largest reserve in proportion to liabilities of any large building society in the Kingdom.

Black Lists.

"Black lists are instruments of coercion as every man whose name is on one soon discovers to his cost." The recent case of *Hardie & Lane Ltd.* v. *Chilton and Others*, serves to remind one of those very pertinent observations which Lord Lindley made in delivering judgment in the celebrated case of *Quinn* v. *Leathern*, 1901, A.C., at p. 538. As the publication of a "black list," however, is not always actionable, and as there are some important authorities on the point, an examination of the law on the subject may prove of interest.

In the case of *Hardie & Lane Ltd.* v. *Chilton and Others*, *supra*, the material facts were briefly as follows: The Motor Trade Association having by means of a trap order obtained proof as they alleged of the plaintiffs' selling a motor car below the protected price, threatened to put them on the stop list unless they paid, *inter alia*, £200 to the indemnity fund of the association. To avoid being put on the stop list the plaintiffs paid £100 on account towards the indemnity fund of the association, and a sum of £7 in respect of the advertisement of an undertaking signed by them, and they further bought back the car they had sold below the protected price, re-selling it subsequently at a loss of £25. The plaintiffs subsequently brought an action against the defendants, the officials of the association, claiming, *inter alia*, damages for alleged conspiracy. In directing the jury, Mr. Justice Avory laid down the law as follows: "If," said the learned judge, "two or more persons agreed to obtain from another person money to which they had no legal right by threats which were calculated to deprive a reasonable man of his voluntary power of action, and if, in pursuance of that agreement, they obtained the money by such threats, the person who paid the money could recover in respect of any damage which he suffered. If apart from any actual conspiracy or agreement any person obtained money by such threats from another person, the latter person was entitled to recover in respect of any damage which he suffered. The fact that the money was paid to the third person (the association) who had no legal claim to it made no difference."

The jury in *Hardie & Lane Ltd.* v. *Chilton and Others*, *supra*, found in favour of the plaintiffs and awarded them the sum of £132 claimed as damages.

It is a general principle of law that where a person compels another, by any illegal means, to act in such a way as to suffer damage, an action will be maintainable to recover the amount of the damage thus suffered, and this will be the case, a fortiori, where the illegal compulsion is exercised by a combination of several persons acting in concert, the tort of conspiracy being committed in such cases.

Tarleton v. *McGawley*, 1 Peake N.P. 270, affords an interesting illustration of the above principle. In that case the master of a trading vessel lying off the coast of Africa was held liable for preventing native traders from trading with the plaintiff's vessel, by firing a cannon at them and driving them off.

It would appear that the employment of black lists or stop lists is to be included among the various acts that may constitute "illegal means," but judicial opinion appears to vary as to whether in any circumstance there can possibly be any legal justification for their employment.

Thus in *Pratt* v. *B.M.A.*, 1919, 1 K.B., at p. 268, Mr. Justice McCardie said: "As a matter of legal principle, I consider that the employment of illegal means for the purpose of injuring another's trade or calling is not excused by proof on the part of a defendant that his conduct was based on the intention to advance the trade interests of himself or his colleagues."

While, however, it is clear that the employment of "black lists" will be clearly actionable if there is no justification for the use thereof, authority is not lacking that there may be such justification, and that where such justification exists no

action will lie. Two recent cases may be referred to on this point, viz.: *Ware & De Freville, Ltd.* v. *M.T.A.*, 1921, 3 K.B. 40, and *Auto-Mart (London) Ltd.* v. *Chilton*, 43 T.L.R. 463.

It was held in *Ware & De Freville, Ltd.* v. *M.T.A.* (where the facts were somewhat similar, except that no payment was made by the plaintiff company as an alternative to having its name inserted in the stop list), that as the publication of the plaintiff company's name in the stop list was done by the defendants *bonâ fide* in the protection of the trade interests of the members of the association, it was not unlawful, and that an injunction to prevent the defendants from publishing the name of the company in the stop list could not be granted. The principle of this case was again applied in *Auto-Mart (London) Ltd.* v. *Chilton and Others*, *supra*, and an injunction refused. The latter case, indeed, went somewhat further than the former, since the defendants made use there of a trap order.

But although a person may have the right to put the name of another person on a stop list where the act is done *bonâ fide* for the protection of trade interests, it does not follow that such a person has the right to demand payment of a sum of money in lieu of not doing so, and demanding any sum of money, whether by way of a fine or otherwise, will amount in such circumstances to the criminal offence of demanding money with menaces: *R.* v. *Denyer*, 1926, 2 K.B. 258 (a case which was discussed in 70 SOL. J., at p. 394), for, as the Lord Chief Justice pointed out, there is not the remotest nexus or relationship between a right to put a person's name upon a stop list and a right to demand from him a sum of money as the price of abstaining from that course (1926, 2 K.B., at p. 268).

What is the position where money is in fact paid in such circumstances? *Hardie & Lane Ltd.* v. *Chilton and Others, supra*, purports to answer this question and decides that any money paid as an alternative to having one's name placed on a stop list may be recovered. Unfortunately, however, this case does not appear to deal quite clearly with the point whether such money is recoverable, irrespectively of whether or not there was justification for the publication of the name on the stop list, nor does this question appear to have been left in terms to the jury.

In the event of an appeal it is hoped that this point may be further elucidated.

Parking Places in London:

New Regulations.

THE London Traffic (Parking Places) Regulations, 1927, came into force on the 31st January, superseding and considerably modifying those of 1925.

The Minister of Transport says that the parking of vehicles in a public street "should be regarded as a privileged use of the highway, and not one contemplated by the law at present governing the use of the highway." Were it not so contemplated there would be no authority to confer the privilege. In fact, s. 10 of the London Traffic Act, 1924 (part of the law governing the use of highways), not only contemplates the use of highways in part as parking places, but expressly confers on the Minister power to make them such. However, the intention to confine the use of that power "to the narrowest possible limits" is quite reasonable and proper.

By a new definition of "parking place" as any of the places described in the schedule, and a definite prohibition against allowing any vehicle to wait upon one, except within the limitations imposed by the schedule, it becomes clear that a parking place remains a parking place even outside the hours limited for its use, and that a car may not, at any time, wait upon it at all, whether by so doing it causes obstruction or not. Cases taken under the old regulations in respect of cars on parking places outside the regulation hours failed on the ground that the parking place ceased at such times to be parking places and the ordinary law of obstruction on highways applied. Ordering that cars may not wait at certain places is within the powers conferred by s. 10 in so many words.

There are some new provisions. Cars on parking places at the side of a road must not obstruct ingress or egress from buildings, gardens or courtyards.

Cars on parking places must not be used for selling goods or services. Cars with general or limited trade licence plates must not wait on parking places.

One abuse is remedied, that of taking a car off a parking place, circulating around a few streets, and getting back again for another spell, to the detriment of others who might want a turn. No vehicle can return to the same parking place save after the lapse of an hour.

Cars have to be left in such a condition that they can, if need be, be moved by hand, and horns are not to be sounded, except immediately before moving.

It is announced that the limits of parking places are to be marked on the carriage-way so soon as "a most suitable material" for marking is determined. This should lead to a reduction in the number of offences committed, especially of putting private cars on cab ranks. The present system of indicating the position of parking places is thoroughly inadequate.

A number of new parking places are designated, a few have been abolished, and a few curtailed.

The new regulations mark a second stage in the attempt to deal with the problem of stationary cars in London. It remains to be seen whether the ever-increasing numbers using the metropolitan streets will not rapidly overtake the accommodation provided. The only alternative seems to be the prohibition of private cars in central areas during certain hours, a prospect which is an unpleasant one for motorists.

A Conveyancer's Diary.

Partition under L.P.A., 1925, s. 28 (3).

Where land is held upon trust for sale and the net proceeds of sale have, under the trusts affecting the same, become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may, with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale:—

(*a*) partition the land remaining unsold or any part thereof; and

(*b*) provide (by way of mortgage or otherwise) for the payment of any equality money: L.P.A., 1925, s. 28 (3).

Upon such partition being arranged, the trustees will give effect thereto by conveying the land in the appropriate manner (subject or not to any mortgage created to raise equality money) to the persons of full age (including trustees for sale or a tenant for life of a derivative settlement) entitled thereto in severalty: *ib.*

Precedents of such instruments are given in the books (see, for example, 1 Prid. 22nd ed., pp. 861-865, 1 K. & E. 12th ed., pp. 1064-1069), but comparatively little information is given in the practice notes as to the necessary preliminaries and recitals or as to the stamp duty payable. A brief survey of the position may, therefore, prove helpful to those who may be called upon to prepare the instruments necessary in such cases.

It will be observed that the statutory power to partition is given in respect of dispositions upon trust for sale coming into operation before or after the commencement of the L.P.A., 1925, s. 28 (5).

The first consideration affecting the form of the conveyance of the severed land is the character in which the grantee

is to take it. A conveyance in the usual form will be made in favour of an absolute owner (see 1 Prid. 22nd ed., p. 861). A conveyance on trust for sale is the appropriate assurance in favour of trustees for sale of a share of the proceeds of sale of the head settlement (*op. cit.*, p. 862); a vesting deed—more usually than not a subsidiary vesting deed—will be made in favour of a tenant for life (*op. cit.*, p. 863).

Section 28 (3), *supra*, authorises the head trustees to convey, on partition, notwithstanding the existence of a derivative settlement. It seems to follow that such a conveyance would be binding upon the sub-settlement trustees or tenant for life.

The consent made requisite by the sub-section is that of the persons of full age interested in possession in the net rents and profits of the land until sale. On the authority of *Re Cliff*, 1927, 2 Ch. 94, it may be argued that trustees for sale of a sub-settlement are "persons interested" and therefore qualified to give the necessary consent.

Such consent is a matter "behind the curtain"; it does not concern a purchaser: *ib.* But, of course, the trustees for sale should, for their own protection, obtain such consent. This will be given by a separate agreement in a schedule to which the terms upon which the partition is to be made, may be set out. All the persons beneficially interested would concur in this agreement; see 1 K. & E., 12th ed., p. 736 n. (*b*).

Another question that may cause difficulty is this: should the title of the owner of each share be recited in the conveyance to him? In other words, is not this a case in which the equitable title is properly brought on to the title? The opening words of s. 28 (3) "where the net proceeds of sale have under the trusts . . . become absolutely vested in persons of full age in undivided shares"—seem to suggest that such title should be brought on to the conveyance. It should be made clear that the occasion has arisen when the trustees for sale can exercise their power to partition. This is, for example, the course followed in 1 Prid. 22nd ed., pp. 862, 863, and in 1 K. & E. 12th ed., pp. 1064, 1065.

The Stamp Act, 1891, s. 90, provides that an instrument affecting a "partition" is to bear a 10s. stamp, and s. 73 of the same Act declares that where any consideration exceeding £100 in value is agreed to be paid or given for equality, the instrument, whereby the "partition" is effected, is chargeable with the same *ad valorem* stamp duty as a conveyance on sale for the consideration.

Doubt may be expressed as to whether the expression "partition" in the Stamp Act, 1891, would include a "partition" as that expression is used in s. 28 (3), *supra*; for the strict meaning of "partition" see *Biggs* v. *Peacock*, 1882, 22 Ch. D. 284, where it was held that the court had no jurisdiction to decree a partition where the land was held upon trust for sale.

If it would not, then it is submitted that where there is no equality money the stamp would still be 10s., for it would be a conveyance made to a beneficiary by a trustee within the Finance (1909-1910) Act, 1910, s. 74 (6). Even if, in the circumstances, equality money is paid, as s. 74 (6) does not expressly provide for payment of an *ad valorem* duty in such a case, and it may be argued that the conveyance is none the less a conveyance by a trustee to a beneficiary under the trust, it would seem that only a 10s. stamp would be necessary.

Undivided Shares: Vesting.

Astbury, J., in *Re Myhill*, 72 Sol. J., p. 86, has "cleared the air" in respect to one or two points of interest connected with the vesting of land held in undivided shares.

In the first place, he decided that by the operation of the Interpretation Act, 1889, s. 1 (1) (*b*), and in the absence, in the context, of any indication of a contrary intention, the expression "trustees or personal representatives" in L.P.A., 1925, 1st Sched., Pt. IV, para 1 (1), includes the singular. There is, for example, no indication of such a contrary intention to be found in the prohibition (see *ib.*, s. 27 (2) as amended) of the payment of proceeds of sale to a sole individual trustee.

Secondly "persons entitled" in this sub-paragraph does not necessarily mean persons "absolutely entitled" to the undivided shares. The shares must be vested in possession, but not necessarily absolutely.

The learned judge found it unnecessary to decide the other point raised in the case, namely, what may be said to have happened where "settled land" was, immediately before the commencement of the L.P.A., 1925, vested in trustees or personal representatives in trust for persons entitled in undivided shares. In *Re Myhill* the entirety of the land was not "settled land," so it was not necessary to decide the point. There is an apparent conflict between sub-paras. (1) and (3) where "settled land" was vested in trustees or personal representatives for persons equitably entitled thereto in undivided shares. The suggestion which we have already made in these columns is that sub-para (3) applies only to cases to which sub-para. (1) is inapplicable. But as Mr. Justice Astbury observed in *Re Myhill*, "that is a difficult question to decide when it arises."

Landlord and Tenant Notebook.

Fixtures Removable by Tenant.

In our last issue we considered what were the essentials necessary to constitute an article a fixture, and we shall now deal with the various cases in which a fixture may notwithstanding be removed by a tenant.

It will be found that as a general rule fixtures are classified into landlord's fixtures and tenant's fixtures, by the latter expression being meant those fixtures which a tenant is entitled to remove, and by the former those which he is not.

"Tenant's fixtures," with which we are at present concerned, may again be classified into "trade fixtures," "fixtures for ornament or convenience," and "agricultural fixtures."

The right of a tenant to remove trade fixtures may be regarded as having been definitely established by *Poole's Case*, 1703, 1 Salk. 368, where a soap boiler was held entitled to remove vats which he had set up in connexion with his trade, the reason of this privilege in favour of trade being that the public interest required it.

It is not every trade fixture that may be removed, and the more important tests generally applied to the question of their removability are:—

(1) The existence of a custom, *Culling* v. *Tufnal*, Buller N.P. 34; *Davis* v. *Jones*, 2 B. & Ald. 165, but not merely of some private usage, *Womersley* v. *Dalby*, 26 L.J. Ex. 219.

(2) The removability of the fixture without injury to the freehold: *Lawton* v. *Lawton*, 3 Atk. 13.

(3) The fact that the article was in itself of a completely chattel nature prior to its annexation: *Elwes* v. *Maw*, 3 East 38.

(4) The fact that the article was capable of being removed without being demolished or losing its essential character or value: *Elwes* v. *Maw*, 3 East 38; *Whitehead* v. *Bennett*, 27 L.J. Ch. 474, *Wake* v. *Hall*, 8 A.C. 195, 208.

Other, but perhaps less important tests are, the intention of the person erecting the fixture, and the comparative value of the same to the landlord and the tenant.

The relaxation of the general rule in favour of the removability of **fixtures for ornament or convenience** would not appear to be quite so wide as it is in favour of trade fixtures. Fixtures for ornament and convenience may be regarded as being removable on the ground that they are to be regarded as part of the furniture which the tenant has brought into the house.

The tests to be applied in order to determine whether such fixtures are removable appear to be as follows:—

(1) The object of the fixture must be either for the purpose of ornament, or for the purpose of general utility or domestic convenience. It is for this reason that ornamental chimney-pieces are removable: *Leach* v. *Thomas*, 1835, 7 C. & P. 327, and furnaces, coppers, pumps and the like erected by the tenant for his own convenience.

(2) The mode of annexation, i.e., whether the fixture is only slightly attached or so annexed as to be permanently incorporated into the building; cf. *Buckland* v. *Butterfield*, 22 R.R. 649, where a conservatory was held to be irremovable.

(3) The facts that the freehold would be injured materially by the removal of the fixture: see *Avery* v. *Cheslyn*, 3 A. & E. 75.

With regard to agricultural fixtures, it was decided in the leading case of *Elwes* v. *Maw*, 3 East 138, that the exception in favour of trade fixtures did not apply to agricultural fixtures. This is a matter which is now regulated by the Agricultural Holdings Act, 1923: cf. s. 22 of that Act.

The above cases form the principal exceptions to the general rule that if an article is a fixture it cannot be removed. It should, of course, be borne in mind that, although they may be removable by law, fixtures may notwithstanding be irremovable where the tenant has contracted with the landlord to leave them at the termination of the lease.

Further, the right to remove fixtures apart from agreement can only be exercised during the continuance of the term and for such period thereafter as the tenant retains possession under a right to consider himself still a tenant: *Weeton* v. *Woodcock*, M. & W. 14. Lastly, the question whether or not an article is a fixture is a question of law: *Reynolds* v. *Ashby*, 1904, A.C. 466, 471; but see *Avery* v. *Cheslyn*, 3 A. & E. 75.

Our County Court Letter.

FURNITURE REMOVERS AND INTERPLEADER.

Few owners of repositories have probably heard of *Crump* v. *Bate*, 4 C.B. 760, the head-note of which states that the sheriff is not entitled to call upon parties to interplead, where he has already exercised a discretion in the matter. Any other applicant for an interpleader order is in the same position. A furniture remover who receives a claim by some other person than his own customer, to goods in his repository, will naturally refer such person to the customer who ordered the storage of the goods. The furniture remover cannot interplead in the county court until he has become a defendant in an action. When served with a summons for detinue the owner of the repository will be wise if he consults his solicitor promptly. The reason is that s. 157 of the County Courts Act, 1888, only deals with interpleader by the high bailiff, and any other person in possession of goods must proceed under Ord. XXVII, r. 15. The latter allows the very short period of five days, after service of the summons in an action, in which to apply for a summons against the claimant. The application must be supported by an affidavit according to Form No. 226, which requires to be adapted to the case under discussion. It is to be noted, however, that there is no need, as in the corresponding High Court Form No. 26, R.S.C., Appendix B, for the applicant to depose that he expects to be—or has already been—sued by the claimant. Notice of a claim by the latter is sufficient ground for a defendant in the county court to interplead. Copies of the affidavit must be lodged with the Registrar for the plaintiff and the claimant, but the latter need not support his claim by affidavit. In the High Court, on the other hand, he must do so: see *Powell* v. *Lock*, 3 A. & E. 315; Annual Practice, 1927, p. 1155. The onus is on the defendant under r. 15 (2), and the Registrar, being satisfied on the points therein specified, is empowered only to issue an interpleader summons for service on the claimant, and must adjourn the trial of the action to the same day on which the interpleader summons is made returnable. This is another digression from High Court practice, as the Master or District Registrar can adopt one of nine courses set out at pp. 1156 and 1157 of the Annual Practice, 1927. The most noteworthy is the power to transfer the proceedings to the county court, under the Judicature Act, 1925, s. 204, if the amount or value of the subject-matter is not over £500. Before being satisfied, however, the Registrar may be called upon by the plaintiff to consider the above-named case. If the furniture was already in the repository when the adverse claim was made, the storage contractor can make out a strong case for the issue of an interpleader summons.

The process of furniture removing, however, is not always accomplished without incident. Protests may be made by landlords, wives living apart from their husbands, or owners of goods on hire-purchase. The lorry driver and his mate are often in a quandary through not knowing whether the adverse claim is *bonâ fide*, but they can solve their difficulty by telephoning to the office of the firm. The manager in such a case is also in a dilemma. If he does not wish to be involved in a dispute and refuses the business, the firm may be sued for breach of contract by their customer. If he takes the risk, and removes the goods to the repository, the firm may be sued for detinue by the person claiming to be entitled to the goods as against the customer. In the latter case the firm may be held not entitled to an interpleader order, on account of their having exercised a discretion within the meaning of the above case. It may be argued on their behalf that, if they have removed furniture on the instructions of a husband, for example, they should not be compelled to fight his case against the wife who claims the goods as her separate property. The answer is that they should have refused the business on the adverse claim being notified to their lorry driver. This advice may restrict commercial enterprise, but it is sound legally, otherwise furniture removers might find themselves acting as the innocent agents of dishonest customers. The storage contractor should also be careful not to part with the possession of any goods after he has had notice of an adverse claim.

Practice Notes.

CLAIMS FOR DAMAGES BY REPRESENTATIVE PLAINTIFFS.

As regards the claim for damages in *Wing* v. *Burn*, the learned judge decided the claim could not be sustained inasmuch as the plaintiffs were suing in a representative capacity. Order 16, r. 9, applies to such cases and is intended to apply the practice which originally prevailed in the Court of Chancery to all Divisions of the High Court (cf. *Bedford* v. *Ellis*, 1901, A.C., at p. 8). In order to succeed in a representative action it is necessary to show that there is a common interest and a common grievance and that the relief sought is in its nature beneficial to all the persons represented (*ib.*). Where a claim for damages is made by plaintiffs purporting to sue in a representative capacity, it will usually be a fatal objection to the claim that it cannot possibly be of a representative character. Thus Fletcher-Moulton, L.J., in *Markt* v. *Knight S.S. Co.*, 1910, 2 K.B., at pp. 1040, 1041, said: "To my mind no representative action can lie where the sole relief sought is damages, because they have to be proved separately in the case of each plaintiff, and thereby the possibility of representation ceases" (cf., however, *Bedford* v. *Ellis*, 1901, A.C. 1). It was on this ground that Clauson, J., held in *Wing* v. *Burn* that the claim for damages was not maintainable. There would appear

however, to be yet another reason (which was not referred to) why the claim for damages in *Wing* v. *Burn* could not succeed, viz., that no action for damages will lie in respect of a wrongful expulsion (cf. *Kelly* v. *National Society of Operative Printers*, 31 T.L.R. 632).

FOUNDATION OF JURISDICTION IN EXPULSION CASES.

Attention may be drawn to the decision of Mr. Justice CLAUSON in *Wing and Others* v. *Burn and Others*, *Times*, 28th ult., because it illustrates two important principles of law which it will be found useful to bear in mind in practice. The material facts in this case were that the plaintiffs, who were certain officials of the Lancashire County Amateur Wrestling Association, and who were suing in a representative capacity, brought an action against the defendants, who were members of the National Amateur Wrestling Association, and were sued in a representative capacity, claiming an injunction to restrain the defendants from cancelling the affiliation of the plaintiff association to the defendant association, a declaration that such proposed cancellation was void, and also damages.

The action was therefore virtually an action to prevent the expulsion of a body of persons from an association of which they were members. In such cases it is well to remember that the foundation of every action for expulsion rests on the fact that the expelled member has some right of property, of which he will be deprived by reason of such expulsion; property for this purpose, however, not being confined to tangible property (cf. for example *Pender* v. *Lushington*, 1877, 6 Ch. D. 70, where a right to vote was considered as property for the above purpose; cf. also *Osborne* v. *Amalgamated Society of Railway Servants*, 1911, 1 Ch. D., at pp. 548, 554, 562). That the existence of some right of property is the sole foundation of jurisdiction in such cases was laid down by JESSEL, M.R., in *Rigby* v. *Connol*, 14 Ch. D., at p. 487, and this principle has been followed ever since. Now in *Wing* v. *Burn* the affiliated association had no rights of property whatever in the parent association, and it was on this ground that CLAUSON, J., held that the claim for the injunction and declaration necessarily failed.

Obituary.

MR. A. C. STANLEY-STONE, C.C.

Deputy Arthur Carlyon Stanley-Stone, Solicitor, Chief Commoner of the City of London Corporation, died on Wednesday, the 25th ult., at the age of sixty-one, after only a few hours' illness. In the late autumn of last year he had a breakdown, following the death of Mrs. Stanley-Stone, but from this he appeared to have recovered. Educated at Reading School and Brighton College, he was admitted in 1889 and ultimately became the head of the firm of Swepstone, Stone, Barber & Ellis, of Broad Street House, Old Broad Street, E.C.2. In the course of his fifteen years of untiring municipal service, he occupied the chairs of nearly a dozen committees, the most important of which was perhaps the Bridge House Estates Committee, and having worked unceasingly to secure the passage of the scheme for the construction of St. Paul's Bridge, he felt its postponement keenly. Deputy Stanley-Stone was an energetic and useful member of The City of London Solicitors Company and regularly attended all court meetings. He served first as Junior Warden, then as Senior Warden and was elected Master in May, 1926, the year in which he became Chief Commoner of the Court of Common Council. He was Clerk to the Turners Company, a member of The Law Society and of the Solicitors' Benevolent Association. Possessed of a charming personality with a rare capacity for hard work, his death has left a serious gap in legal and municipal circles in the City of London.

SIR WALTER PRIDEAUX.

Sir Walter Sherborne Prideaux, Kt., Solicitor, died on Sunday last, the 29th ult., at the age of eighty-one. Admitted in 1870, taking honours in the final examination, he began his long service with the Goldsmiths' Company as assistant clerk, was appointed clerk in 1882 and retired in 1918, when he was succeeded by his son, Mr. W. T. Prideaux. Sir Walter was knighted in 1891 for various services, especially in connexion with the repeal of the gold and silver plate duties, and was the author of "Memorials of the Goldsmiths' Company," which he published (in two volumes) for private circulation in 1896.

MR. J. C. MOBERLY.

Mr. John Cornelius Moberly, Solicitor, the last surviving son of Dr. George Moberly, Bishop of Salisbury from 1869 to 1885, died at Southampton on Sunday last, the 29th ult. at the age of seventy-nine. Educated at Winchester and New College, Oxford, he was admitted in 1872, when he joined Mr. T. F. Adams in partnership at Alresford, but later accepted the appointment of Official Receiver in Bankruptcy at Southampton. For many years a member of the Winchester Diocesan Council, he was also associated with the Winchester Diocesan Trust, the Clergy Sustentation Fund and the Diocesan Clergy Pension Fund. He leaves a widow and four children. H.

Reviews.

Stringer on Oaths and Affirmations in Great Britain and Ireland, for the Use of Commissioners for Oaths. Fourth Edition. 1928. EDMUND R. COOK, Solicitor (Secretary of the Law Society and Deputy Registrar of Solicitors), and A. O. THOMAS (Crown Office and Associates Department, Royal Courts of Justice). pp. xix and 256 (with Index). Stevens & Sons, Ltd., Chancery-lane. 10s. net.

The fourth edition of this well-known work will be a welcome addition to the library of every practising solicitor, not only on account of its scope, but because of the great care which the present editors have bestowed upon its preparation. Part I lucidly explains the position and authority of commissioners to administer oaths, whilst Part II deals exhaustively with the subject of administering oaths to and taking affirmations by witnesses giving evidence by documents or *vive voce* in court. The inclusion of forms of oaths and affirmations for use in criminal proceedings in this edition should prove of great service to all engaged in that branch. A table of cases and a good index are useful features.

W.P.H.

Books Received.

Inland Revenue. The Income Tax Act, 1918, and Finance Acts. Supplement No. 2, comprising (1) Text of the Income Tax, Super-tax and Surtax provisions of the Finance Act, 1927; (2) The Income Tax (Sched. V, Amendment) Order, 1927; (3) Supplement to Index, including Indexings to Supplement No. 1.; (4) Manuscript Amendments; (5) Reprinted Pages; and (6) Cross References. Paper. Super-royal 8vo. pp. 496 to 541 Supplement to Index, 11 pp. H.M. Stationery Office. 4s. net.

The Law of Moneylending. LINTON THORP, LL.B. (Lond.), of Lincoln's Inn, Barrister-at-Law, and A. AIKEN WATSON, of Gray's Inn, Barrister-at-Law. Crown 8vo, cloth. pp. xv and 133 (with Index). 1928. Effingham Wilson, 16, Copthall-avenue, E.C.2. 4s. 6d. net.

A History of the Crime of Blasphemy. G. D. NOKES, LL.D., of the Middle Temple, Barrister-at-Law. Demy 8vo. pp. xix and 178 (with Index). 1928. Sweet & Maxwell, Ltd., Chancery-lane, W.C.2. 16s. net.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Market Garden—AGRICULTURAL HOLDINGS ACT, 1923, s. 48.

Q. 1128. (1) In 1905 A let to B an acre of land on an annual tenancy from Ladyday of that year. The agreement was after the type of the usual farm tenancy agreement adapted to the circumstances, the land being used for the cultivation of market garden produce.

(2) In 1908 A let to B on an annual tenancy a dwelling-house with cottage, orchard, garden and outbuildings enjoyed therewith containing 3 roods in extent from the 28th of March, 1908. This agreement contains the usual covenants, and also a covenant to cultivate the garden and orchard, and to preserve the fruit trees and bushes which are permanently set out, and to replace such as should be destroyed either by accident or decay.

(3) In September, 1907, A let to B a further 1¼ acres of land on an annual tenancy from the 29th day of September, 1907. This agreement is of the usual type adapted to suit the circumstances.

(4) All the land has been used as a market garden, but the landlord did not let the property as such, nor has he ever consented in writing to its being so used.

(5) B died about 1924, and his wife, as administratrix, has remained in possession ever since, but has now given notice that she intends to quit the premises at Ladyday, 1927.

(6) During the tenancy B erected on a part of the premises a number of glass-houses, and there is also doubtless on the premises now rhubarb and strawberry beds and fruit trees of doubtful value.

(7) Having regard to the provisions of the Agricultural Holdings Act, 1923, and in view of the fact that the tenancy was not in existence in 1896, is the property a market garden within the meaning of the Act? If not, it is presumed that the landlord is under no compulsion to take over the glass-houses and pay compensation for the improvements mentioned in the 3rd Sched. of the Act.

A. This question could not be answered with certainty without sight and careful consideration of the agreements mentioned. The questioners are referred to *Re Masters and Duveen*, 1923, 2 K.B. 729, as to the construction of s. 48 (which replaces s. 42 of the previous Act then considered) and to *Purser* v. *Worthing Board of Health*, 1887, 18 Q.B.D. 818, on the meaning of "market garden." It is possible to have a market garden without glass-houses, see Rigby, L.J., in *Smith* v. *Richmond*, 1898, 1 Q.B. 683, at p. 708. A large holding covered with fruit bushes and garden vegetables and so to be cultivated might *primâ facie* be a market garden, but a small holding with a dwelling-house, such as that let in 1908, might be considered as merely sufficient to supply produce, if properly cultivated, to the dwelling-house, see *Re Wallis*, 1885, 14 Q.B.D. 950, and *Bickerdyke* v. *Lucy*, 1920, 1 K.B. 707.

Company—WINDING UP—UNCLAIMED ASSET.

Q. 1129. I am acting for the liquidator of the X Co., Ltd., which is now in course of being wound up voluntarily and upon the share capital of which a return to shareholders of £1 1s. per £1 share is being made. All the shareholders except one have been paid the amounts respectively due to them. The difficulty about this one exception is as follows: The original shareholder, C.L., died several years ago, but the grant of representation (if any was taken out) was never registered in the company's books. This made no difference as far as payment of a dividend was concerned, for no dividend has been declared since the death of C.L. I am informed by the widow of C.L. that she is not the personal representative of her husband and that "all the affairs concerning the estate of the late C.L. are in the hands of A.C.B.L., her son. Accordingly I wrote to A.C.B.L. asking whether he is the legal personal representative of his late father, and if so, asking him to send the grant of representation to be registered and to deposit the share certificate. But in spite of several reminders, A.C.B.L. has not taken the trouble to reply and the completion of the liquidation is thus held up. The deceased held one share only, and probably A.C.B.L., who is a very wealthy young man, does not consider it worth while to be troubled about a guinea—to him no doubt a mere trifle. Under these circumstances your advice is sought as to what the liquidator should do with the guinea in question. Does any provision exist for paying it into the Bank of England? Or should the liquidator open a deposit account with it at a local bank and inform this aristocratic and independent young man that this has been done? The liquidator does not wish to retain indefinitely the said sum of £1 1s. and would like to know the best means of absolving himself from personal liability for the money and of concluding the winding-up.

A. The money not being claimed, it is suggested that the liquidator should after six months pay it into the Companies Liquidation Account at the Bank of England under the Companies Act, 1908, s. 224 (4), thus being protected by the prescribed certificate of receipt.

Pre-1926 Trust to Retain or Sell—IMMEDIATE BINDING TRUST FOR SALE.

Q. 1130. The will of A who died before the 31st December, 1925, contains the following devise and bequest of his residuary estate to his trustees "upon trust in their absolute discretion either to retain the same in its then present state of investment or at any time or times to sell and dispose of and convert the whole or any part thereof into money, and to stand possessed of the moneys to arise from such sale, calling in, and conversion and of all moneys forming part of my estate (hereinafter called 'my residuary estate') upon trust to pay my debts funeral and testamentary expenses, and to invest the residue 'as therein mentioned,' and to stand possessed of the interest, dividends and annual proceeds to arise from such investments, and from the whole of my residuary estate, upon trust to pay the same unto my wife during the period of her natural life, and from and after her decease my trustees shall sell, call in and convert the whole of my residuary estate, and stand possessed of the proceeds thereof, upon trust for my son James absolutely." (1) Is there an immediate binding trust for sale (*a*) during the lifetime of the wife; (*b*) after her decease? (2) It is assumed that no vesting assent or deed in favour of the wife is necessary.

A. (1) The opinion here given is that there is an immediate trust for sale in (*a*) and (*b*); see 70 SOL. J., pp. 1130, 1154. (2) The assumption is correct in the circumstances.

Partnership Property—DEATH OF ONE PARTNER—NEW PARTNER—PROCEDURE.

Q. 1131. By a conveyance dated prior to 1926, property was conveyed to A and B as joint tenants, as part of their partnership property, and the deed contained the usual clause empowering the survivor to sell the property and give a receipt for the purchase money. In 1927 A died and B has taken C into partnership, and the latter will pay the share due to A's personal representatives. The question of conveying a share

of the property arises, and it is proposed that this should be done by B appointing C as trustee, jointly with himself, of the trust for sale created by the L.P.A., 1925, and that the appointment should bear a ten shilling stamp. Is this the correct mode of dealing with the matter ?

A. Yes. The mere appointment of C as a new trustee will under T.A., 1925, s. 40 vest the legal estate in B and C as trustees for sale. It is assumed, of course, that A's personal representatives will convey A's beneficial interest in the property to C, such conveyance bearing an *ad valorem* stamp on the value of the interest conveyed. This conveyance will be C's title deed to the equitable interest, should he want to dispose of it later ; but it should not be brought on to the legal title.

Joint Tenants —Charge on Share of One.

Q. 1132. A and B, in 1926, buy a house as joint tenants, having agreed to supply the purchase money in equal shares. A pays half the purchase money in cash and B borrows his half from a building society on the security of a legal mortgage of the house in which A joins as joint mortgagor. It is verbally agreed between A and B that B alone shall pay the building society subscriptions, etc. A now wishes to secure himself against possible default by B in his payments and B is willing to execute any document to this end. How can this be effected ?

A. A and B should sign an agreement which will effectively bind B in equity in respect of the proceeds of sale and rents until sale. It is only vis-à-vis a purchaser under the statutory trust for sale imposed by the L.P.A., 1925, ss. 36 (1) and 35, that such an agreement does not affect the title to the land. Or A and B could execute a mortgage in A's favour, charging the land with any moneys payable by him by reason of B's default. This would have to be registered as a puisne mortgage under the L.C.A., 1925, s. 10 (1) (c) (i).

Settled Land—Surrender of Reversion to Tenant for Life—Title—Voluntary Conveyance by Daughter to Mother—Validity.

Q. 1133. Referring to the answer to *Q.* 1100, I should now add to the particulars I gave you that the testator appointed his executors trustees for sale, and to pay the income to his widow the vendor for her life or re-marriage, and then to divide the capital between his son (who predeceased him) and his daughter. The vendors' solicitors will not agree to the appointment of a co-trustee, but now suggest that the daughter should execute a deed releasing her reversionary interest in the property in order to put an end to the settlement that may exist, and thus enable the vendor to sell as absolute owner, and refer me to *Adnams* v. *Alefounder*, 1927, 1 Ch. 360. (1) Do you consider that I can safely accept such a title ? (2) Can they force this title upon the purchaser any more than they could the title they proposed to make under the contract ?

A. Under the proposal of the vendor's solicitors, she would show that, by acquiring her daughter's equitable interest in reversion, the whole fee was vested in her in equity as well as in law. A conveyance by her in such circumstances would be by virtue of her position as owner in fee, and not a disposition under the S.L.A., 1925, to which s. 13 applies, see s. 112 (2). The opinion is therefore given that the Act does not in itself stand in the way of a good title, under such a scheme. But reference to *Powell* v. *Powell*, 1900, 1 Ch. 243, will show another difficulty inherent in the scheme, because the daughter's voluntary conveyance to the mother might be set aside, and the purchaser, taking through such conveyance, would have notice and be bound by the daughter's equity. If the purchaser is anxious to buy possibly he may be safe if his advisers are also appointed advisers to the daughter, and they, being thoroughly satisfied that there is no undue influence, endorse a memorandum on the conveyance by her accordingly. But there seems no reason on the face of it why the mother and daughter should not appoint trustees for the purposes of the S.L.A., 1925, under s. 30 (1) (v), and so give the purchaser the protection to which he is entitled by a straightforward sale under the Act.

Personal Representatives of a Testator dying before 1926—Sale by as Such after 1925—Effect of A.E.A., 1926, s. 36 (6) and (12)—Title.

Q. 1134. A testator by his will dated August, 1918, appointed two executors and trustees and gave, devised and bequeathed to them all his real estate, upon trust to allow his wife to carry on his business as a farmer for her life and to use the farm which belonged to him for that purpose, and he directed that on the death of his wife his trustees should stand possessed of the proceeds of sale as therein mentioned. The testator died in July, 1921, and his widow died on the 13th January, 1926. In March, 1926, the trustees of the testator's will conveyed the farm to a purchaser " as personal representatives of the testator and under or by virtue of all statutory and other powers, if any, them thereunto enabling," and the conveyance contained a recital that the vendors had not in any way assented to the vesting of the real estate in the trustees of the will. It is suggested that on the 1st January, 1926, the farm became vested in the widow as tenant for life under the S.L.A., 1925, and that her representatives should have conveyed the property or vested it in the trustees of the testator's will. If this is so, what is the simplest way out of the difficulty ?

A. The opinion is here given that the conveyance of March, 1926, was good, see the point fully discussed in " A Conveyancer's Diary," pp. 739, 740, Vol. 71. Even if the land had vested in the widow, and then in her representatives, the operation of the second paragraph of the A.E.A., 1925, s. 36 (6), appears to be strong enough to divest them, on conveyance by personal representatives as such, with the above recital.

Mortgage—Sale by First Mortgagee under Power—Registered Puisne Mortgage—Cancellation of Registration—Vendor's Obligation.

Q. 1135. A, as mortgagee, has agreed to sell a leasehold dwelling-house which was mortgaged to her (mortgage by assignment) on the 20th July, 1923, the mortgagor having made default in the payment of principal and interest due under the mortgage deed. There is a second mortgage on the property to B, who has registered his charge. A, as mortgagee, has contracted to sell to C the purchaser, at £745, but before entering into the contract gave B the option of taking the property over at the same figure if he so wished, B, however, did not entertain the offer. C's solicitor, on investigating the title, has put in a requisition as follows :—" The vendor must before completion, obtain at her own expense the cancellation of any registered charge affecting the property," to which A's solicitors reply as follows :—" The vendor is not aware of any, but if the registration refers to the second mortgage of which the vendor has had notice and the same is registered under the L.C.A., this will not concern the purchaser as the vendor is selling under the statutory powers implied in a mortgage of prior date." Can C, before completing, compel A to take whatever steps are necessary to get the registration of the second mortgage cancelled ? There is nothing in the contract of sale itself stipulating that C should not call for the cancellation of any registered charges on the property.

A. The answer is in the negative, see answers to *Qs.* 894 and 960, pp. 645, 741, *ante.*

Will—Distribution of Residuary Personalty.

Q. 1136. A by his will directed his trustees (1) to invest the residue of his estate on specified investments ; (2) to pay the income of one equal third part thereof to B, C and D equally, and afterwards to survivor or survivors, and on the death of the last survivor to hold the income and corpus of that one equal third part of his residuary estate upon trust for the issue of B, C and D according to the stocks. D, the last survivor,

died in 1923, leaving E and F, children of B, and G, the only child of C, surviving. The one-third share of A's residuary estate, therefore, became distributable in 1923, as to one-half to E and F, and as to the remaining half to G. G died intestate in 1927 and her estate became distributable under the A.E.A., 1925, amongst twenty persons (issue of deceased uncles and aunts). The whole of A's residuary estate is now represented by approximately £2,000 War Stock and £400 invested in 1904 on security of certain freehold property. I act for the administrators of G, also for E and F. The remaining two-thirds of A's residuary estate cannot yet be distributed. The solicitor for the trustees of A contends that, as he cannot call in the mortgage on account of the Increase of Rent and Mortgage Interest Restrictions Acts, 1923-1925, he cannot advise a distribution of one-third of A's estate in cash as the beneficiaries ultimately entitled to the remaining two-thirds might be prejudiced. As you will observe, it is essential that G's administrators should receive cash. Is the solicitor for the trustees of A right in his contention ?

A. A's trustees have no answer to the claims of E and F and G's administrators to one-third of the War Stock. The mortgage they must, of course, hold until they can realise, and then also pay in thirds.

Will—Rule in *Shelley's Case*—Title.

Q. 1137. By his will the testator devised unto his trustees their heirs and assigns, a freehold messuage to the use of his trustees, their heirs and assigns, during the life of his daughter H.M.W., upon trust to pay the net rents to her for life, and from and after the decease of his said daughter to the use of his grandson, J.P.W., for his life, and from and after his decease to the use of the child or children and remoter issue of his said grandson as therein appearing, and in default of such issue, to the use of the right heirs of his said daughter, H.M.W., for ever. The testator's daughter, H.M.W., had six children, four sons and two daughters. She died in 1875, leaving a will appointing her eldest son, the said J.P.W. and W.B., executors and trustees, and gave and devised her real and personal estate to her trustees upon trust for sale and division amongst her six children, all of whom were then living, and attained twenty-one years. The said J.P.W. died in 1923, without issue, leaving a will and one of his brothers, J.B.W., him surviving. It is now proposed to sell the premises, and it has been suggested that the rule in *Shelley's Case* applies, and the testator's daughter, H.M.W., acquired a remainder in fee simple in the property expectant on the determination of the said J.P.W's estate, notwithstanding the devise to the children of the said J.P.W., and that as the said J.P.W. was the surviving trustee of the will of his mother, the said H.M.W. his executors, would be the proper parties to enter into the contract for sale if this suggestion is good law. Please state whether in your opinion the suggestion that in the events that have happened the rule in *Shelley's Case* applies, and, if so, if the executors of the said J.P.W. are the proper parties to sell or, if not, who are the right heirs of the said H.M.W. ?

A. The daughter took an equitable estate for life under the testator's will, and her right heirs, the ultimate legal use. Under such a devise *Shelley's Case* has been held not to apply, see *Shapland* v. *Smith*, 1780, 1 Bro. C.C. 74, and other cases cited in "Fearne's Contingent Remainders," 9th ed., pp. 56-60. This being so, J.P.W., as her right heir, was entitled as purchaser to the remainder contingent on the failure of his issue, and his executors are the proper parties to sell, though not under the title suggested in the question.

The attention of the Legal Profession is called to the fact that the PHŒNIX ASSURANCE COMPANY Ltd., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

Correspondence.

Legal Liability for Damage by Floods and Tides.

Sir,—I read with interest the article on "Legal Liability for Damage by Floods and Tides" in your issue of the 21st inst., which so very concisely and accurately states the law upon the subject.

You are in error, however, in stating that the Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879, is not printed in the text-books on local government in ordinary use. I should like to correct that, as probably there will be a number of claims and questions arising in consequence of the recent flooding. There are only two standard legal works on London Government, namely, Woolrych's "Metropolis Management Acts" and Hunt's "London Local Government," which are to be found in most law libraries, and which contain not only the Act of 1879, but also the Metropolis Management Act of 1855. Also the councils established by the London Government Act, 1899, are not "district councils" as you call them, but Metropolitan Borough Councils.

John Hunt,
Town Clerk.

Westminster City Hall,
Charing Cross Road, W.C.2.
26th January.

[In this particular branch of law we may take Sir John's approbation as Sir Hubert's. His corrections as to the text-books and the title of the councils are of course accepted.—Ed., *Sol. J.*]

NOTES OF CASES.

Court of Appeal.

No. 1.

In re **a Debtor.** 5th December, 1927.

Bankruptcy—Receiving Order—Order dismissed on Terms Terms not complied with—Second Petition and Receiving Order—Demand of Money for which Debtor not liable—Extortion—Abuse of Process of Court—Petition dismissed.

Appeal from a receiving order made by the Registrar in Bankruptcy based on a judgment debt. The debtor had been induced by a friend to sign a cheque for £500 payable to the creditors, a firm of stockbrokers, as a deposit paid under an underwriting agreement, whereby the S Trust agreed to underwrite the issue of shares in a company. The debtor had no means of meeting payment of the cheque, but said he expected his friend would pay money into the bank and enable him to do so. The cheque was dishonoured and the creditors obtained judgment under Ord. XIV for £500 and costs, and issued a bankruptcy notice thereon. They also sued the S Trust and obtained a judgment which had remained unsatisfied. The bankruptcy notice was not complied with and the creditors served a petition, which, on the appeal of the debtor, was adjourned from time to time, and was ultimately dismissed upon the terms that (*a*) the debtor should pay the whole of the costs of the proceedings taken against both himself and the S Trust, as between solicitor and client, £160; (*b*) that he should pay £100 off the judgment debt; (*c*) that he should guarantee the payment of the balance of the judgment debt within the next three months. The debtor's solicitors wrote accepting these terms, but saying that he would pay the proper taxed costs only which he was liable to pay in proceedings against him. The debtor paid £115 in compliance with these terms, but, having no further means, then defaulted. The creditors then served a second bankruptcy notice and petition, upon which the Registrar made a receiving order. On appeal by the debtor,

The Court (Lord Hanworth, M.R., Sargant and Lawrence, L.JJ.) allowed the appeal. The creditors were not entitled to recover solicitor and client costs, or any costs at all in respect of their claim against the S Trust, and the demand for them imposed by the terms on which the original petition was dismissed was most improper. It was an attempt to extort from the debtor money which he was not liable to pay as a price for withdrawing bankruptcy proceedings against him, and a payment on account of such money was actually extorted. There was ample authority to show that what was done amounted to an abuse of the process of the court: *Re Atkinson*, 9 Moor. 193, and *Re G.*, 44 Sol. J. 345. The case fell within s. 5, sub-s. (3), of the Bankruptcy Act, 1914, where the court was satisfied that for sufficient cause no order ought to be made.

Counsel: *Clayton*, K.C., and *Beyfus; R. Fortune.*

Solicitors: *Isadore Goldman & Co.; Morley, Shirreff & Co.*

[Reported by H. Langford-Lewis, Esq., Barrister-at-Law.]

High Court—Chancery Division.

***In re* Myhill: Hull *v.* Myhill.**

Astbury, J. 15th December, 1927.

Law of Property—Transitional Provisions—Undivided Shares—Settled Shares—One Settled Absolutely—Entirety Vested in Legal Personal Representative of last Surviving Trustee—Law of Property Act, 1925, 15 Geo. 5, c. 20, Sched. 1, Pt. 4, para. 1 (1).

Summons taken out to determine how title could be made where the property was held in equity in undivided shares under the following circumstances, having regard to Sched. 1, Pt. 4, of the Law of Property Act, 1925. In the events which happened after the will of the testator and having regard to s. 30 of the Conveyancing Act, 1881, certain freeholds stood vested, in December, 1925, in the testator's son, John, as personal representative of the last surviving trustee, in trust as to one-fourth for John for life, with remainder to his children; as to one-fourth for the testator's daughter, Jane, for her life, with remainder to her children; as to one-fourth for the testator's daughter, Florence, for life, with remainder to her children; and as to the remaining fourth for a deceased daughter, Mary's, children absolutely. In 1898 John, as such personal representative, acting under s. 10 of the Trustee Act, 1893, 56 & 57 Vict. c. 53, had purported to appoint himself and the plaintiff trustees of the will, and also Settled Land Act trustees, and made the usual vesting declaration, and the new trustees had acted in their trust, but it was admitted at the hearing that the appointment was bad because John had appointed himself a co-trustee. The question was where the legal estate was now vested, and who could make title.

Astbury, J., after stating the facts, said: Sched. I, Pt. IV, clearly applies, and the only question is which of the sub-paragraphs (1) (3) and (4) apply. Sub-paragraph (1) provides that if the entirety of the land is vested in "trustees or personal representatives" in trust for persons entitled in undivided shares, then (*b*) (omitting (*a*) as there are no incumbrances) the land shall be held by "such trustees or personal representatives" upon the statutory trusts. The first question is whether that applies to land vested in one trustee or one personal representative. Now, under the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1 (1) (*b*), the plural includes the singular unless a contrary intention appears. It is suggested that s. 27 (2), which, as amended by the Law of Property (Amendment) Act, 1926 (16 & 17 Geo. 5, c. 11), Sched., provides that proceeds of sale shall not be paid to or applied by the direction of fewer than two persons as trustees for sale, shows a sufficient contrary intention. But that provision does not touch the operation of Sched. I, Pt. IV. It is also suggested that sub-para. (1) is confined to the case of persons absolutely entitled in undivided shares. In my judgment that is not the true construction, and this is borne out by sub-para. (2), which provides that if the entirety of the land (not being settled land) is vested "absolutely and beneficially" in not more than four persons of full age "entitled thereto in undivided shares" it shall vest in them as joint tenants upon the statutory trusts. This shows that the expression "entitled in undivided shares" is used in the general sense of being a joint interest therein, and does not mean "absolutely entitled," and in my judgment the case falls within sub-para. (1). It is then submitted that if sub-para. (1) applies to limited interests like the present it will also apply to a case where the entirety of the land, though vested in trustees is settled land and would clash with sub-para. (3). That may be a difficult question to decide when it arises, but it does not arise here. The entirety is not settled land, and sub-para. (3) has no application. Sub-paragraph (4) does not apply, as the case falls within sub-para. (1). There will be a declaration that the land is held by John upon the statutory trusts, and on the appointment of an additional trustee to act with him, they can make a good title.

Counsel: *B. F. Mendel; Stafford Crossman* and *Eardley Wilmot.*

Solicitors: *Horsley & Weightman; Maude & Tunnicliffe.*

[Reported by L. M. May, Esq., Barrister-at-Law.]

High Court—King's Bench Division

W. Jones (Inspector of Taxes) *v.* C. H. Wright.

Rowlatt, J. 2nd December 1927.

Revenue—Income Tax—Solicitor acting as Trustee—Remuneration Clause in Will—Percentage of Trust Income—New Profit—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Sched. D, Case II.

A solicitor appealed against an assessment to income tax in the sum of £2,703 for the year ending 5th April, 1926. In the computation of the assessment were included sums in respect of work done in relation to three trusts by the instruments creating which he was appointed a trustee with power to charge. His agreed remuneration was a percentage of the trust fund income, which had already been assessed to income tax. The Commissioners held that this remuneration was not chargeable upon the respondent under Case II of Sched. D of the Income Tax Act, 1918, and reduced the assessment to £2,674. The Crown appealed.

Rowlatt, J., allowing the appeal, said that payments from profits or gains did not suffer deduction of income tax unless it was by way of division of profits. It was not a division of profits where a payment was a spending of profits; it was a spending which created a new profit which was taxable in the hands of the recipient. All that the respondent got under the clause empowering him to charge was the removal of a disability which otherwise would have prevented him from making the contract in question. For the purposes of the Income Tax Acts the sums received by the respondent must be treated as remuneration earned by him as a solicitor, and nothing else.

Counsel: *The Attorney-General* (Sir Douglas Hogg, K.C.) and *R. P. Hills*, for the Crown; *Raymond Needham*, for the respondent.

Solicitors: *The Solicitor of Inland Revenue; S. Thornhill Tracey.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

H. J. Green (Inspector of Taxes) *v.* J. Gliksten and Son, Ltd.

Rowlatt, J. 7th December, 1927.

Revenue—Income Tax—Timber Burned—Insurance Money—To be brought into Account—Not Merely Cost Price of Timber—Income Tax Act, 1918, 8 & 9 Geo. 5, c. 40, Sched. D, Case 1.

The respondents, timber merchants, received from various insurance companies £477,838, the replacement value of timber destroyed by fire in August, 1921. The total value

of the stock on hand at that date was £266,831. Of the £477,838, £160,824, the estimated written down value of the timber destroyed, was brought into the company's accounts for the year ended 30th June, 1922, as a trading receipt. The balance of the insurance money was carried as a reserve into the balance sheet for the year ended 30th June, 1922, but was not brought into the profit and loss account. The Income Tax Commissioners decided that the insurance money did not represent a trade receipt, and that no part of it was assessable as trade profits under Case 1 of Sched. D of the Income Tax Act, 1918. On appeal by the Crown this decision was reversed.

ROWLATT, J., said that what really occurred must be recorded in the account. The company had received money in place of the burned timber, and that money must be brought into account. Judgment was given for the Crown, with costs.

COUNSEL: *The Attorney-General* (Sir Douglas Hogg, K.C.) and *R. P. Hills*, for the Crown; *Sir John Simon*, K.C., *Latter*, K.C., and *Cyril King*, for the Respondents.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Lawrence *v.* Hall and Another.

Horridge, J., and a Special Jury. 24th and 25th January.

LIBEL—SOLICITOR—LEASE PREPARED—ALLEGED INCOMPETENCE—PRIVILEGED OCCASION—MALICE.

The plaintiff in this action, a solicitor, brought an action for libel against the defendants, a working men's club and its secretary, in respect of the contents of letters written by the secretary and relating to a lease of premises, to be acquired by the club, which the plaintiff had prepared for the defendants. One letter written by the secretary, dated the 13th June, 1926, seen by the committee of the club, contained, *inter alia*, the following: "The club should seek to engage a responsible solicitor—one who is known to be capable of conducting an ordinary conveyancing transaction." The plaintiff alleged that by those words the defendants meant to imply that he was an incompetent solicitor who could not conduct an ordinary conveyancing transaction. The defendants pleaded that the words were written and published on a privileged occasion, without malice, and in the honest belief that they were true.

The plaintiff in evidence emphasised that in the circumstances the heads of terms for the lease which he drew up, and which were signed and affixed with a 6d. stamp, was only a temporary arrangement.

HORRIDGE, J., after plaintiff's evidence, said that there was no possible suggestion against the plaintiff, he had cleared his character; his lordship ruled that the occasion was privileged and left the question of malice to the jury. The jury found that the defendants were not actuated by malice in regard to the letters and a verdict and judgment for the defendants was accordingly entered.

COUNSEL: *J. D. Cassels*, K.C., and *G. O. Slade*, for the plaintiff; *Sir Henry Maddocks*, K.C., and *A. H. Forbes*, for the defendants.

SOLICITORS: *J. Page Thomas*, for *W. N. Evans*, Tonypandy; *Marcus & Francis*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

AUSTRALIAN MUTUAL PROVIDENT SOCIETY.

The London Manager of the Australian Mutual Provident Society reports having received a cable advising that the net new sums assured completed during 1927 amount to £15,091,928 in the ordinary department, and to £4,062,280 in the industrial department, making a total of £19,154,208. This, it is stated, represents a record in each department. The Society does not transact industrial business in the United Kingdom.

Societies.

The Law Society.

GENERAL MEETING.

A general meeting of The Law Society was held on Friday, the 27th ult.. Mr, Cecil Allen Coward, the president, taking the chair. Among those present were: Mr. Robert Mills Welsford, M.A., LL.D. (vice-president), Mr. Ernest Edward Bird, Mr. Thomas Hume Bischoff, Mr. Harry Rowsell Blaker (Henley-on-Thames), The Rt. Hon. Sir William James Bull, Bart., M.P., Mr. George Dudley Colclough, Mr. Alfred Henry Coley, LL.D. (Birmingham), Sir Robert William Dibdin, Mr. Walter Henry Foster, Mr. Dennis Henry Herbert, M.P., Mr. Leonard William North Hickley, Mr. Randle Fynes Wilson Holme, B.A., Mr. Arthur Murray Ingledew (Cardiff), Mr. Charles Mackintosh, LL.D., Col. Maclure (Manchester), Mr. Charles Gibbons May, Mr. Arthur Croke Morgan, Mr. William Egerton Mortimer, Sir Charles Henry Morton (Liverpool), Mr. Samuel Saw (Greenwich), Mr. Herbert Harger Scott, LL.B. (Gloucester), Mr. Francis Edward James Smith, M.A., Mr. Walter Mantell Woodhouse, members of the council; Mr. E. R. Cook (secretary), and Mr. H. E. Jones (assistant secretary).

PRESIDENT'S REMARKS.

The president said it had been the practice to convene a general meeting of the society in January of each year, in order that the members might be able to make suggestions for the consideration of the council. Under the bye-laws notices of such motions were required to be given previously to the meeting. Upon the present occasion no such notices had been received, an occurrence which, he was told, was unique in the history of the society—it was certainly so as far as his own experience was concerned. He thought, however, that it would be well to take the opportunity of referring to one or two matters of legal interest.

FUSION OF THE PROFESSION.

At the recent annual general meeting of the Bar, the Attorney-General who presided had referred to the question of the so-called fusion of the two branches of the profession. He (the president), in his address at the annual provincial meeting in Sheffield, in September last, expressed a decided view upon the question. He had urged that such a fusion was undesirable from many points of view. It was satisfactory to see that he had thus been in agreement with the Attorney-General. Both branches of the profession fulfilled a great and useful work, but there were strong grounds for thinking that their power of doing good would be diminished if they ceased to remain separate entities. The members of the Bar certainly would not be able to satisfactorily perform the work which was done by solicitors, until they had gained experience in actual practice. The two branches performed entirely separate and independent functions. Solicitors might with accuracy say that they were as necessary to the Bar as they were to the public, and *vice versa*. Might they not, therefore, be justly proud of the position they occupied, and content themselves with earnest endeavours to maintain and increase their usefulness and prestige. It must be borne in mind that, although fusion might be undesirable, it was in the interests of both branches that there should be a ready and speedy means of transit from one branch to the other. The subject had given rise to some discussion between the council of the Law Society and the Bar council, and the question, as the Attorney-General had said, had now been set at rest, unless indeed and until further developments should arise.

ADDITIONAL KING'S BENCH JUDGES.

Another matter touched upon by the Attorney-General was that of the appointment of additional judges. The solicitors' branch of the profession cordially agreed with the views expressed by the Attorney-General on the subject. Promptness in the administration of justice was really essential, and, obviously, this could not be brought about if the Bench was understaffed. They would all feel hopeful that the necessary authority might be promptly obtained and that the proverbial complaint of the law's delays might not be longer attributable to want of judges. So long as the present circuit system remained, three additional judges would be required. The time and energies of the present judges were to a great extent occupied in attending in remote provincial towns to try cases which could be more expeditiously and satisfactorily dealt with in a few central places. Judges were absent on circuit at one time or another during the present term. The work of the London courts consequently suffered. It would be seen (see *infra* p. 89) that Mr. Justice MacKinnon had spoken at the Carmarthen Assizes very much to this effect. Questions, however, arose in dealing with the matter which were not easily solved and within recent years the subject

had been enquired into, certainly by Lord Macnaghten's Committee in 1908, and by two Royal Commissions which had been held since, of all of which he (the President) had been a member. Some of the suggestions which had then been made had been adopted, with beneficial results, but there were still reforms in connexion with the matter which many thought could be advantageously effected, which would economise the time of the judges.

POOR PERSONS' PROCEDURE.

The work done by the solicitor branch of the profession in assisting poor persons had been steadily and satisfactorily progressing. It had involved great industry and self-sacrifice on the part of the various committees, and of those engaged in it. There were no fewer than eighty committees representing the Provincial Law Societies. The committees representing London had devoted much time to the consideration of the large number of cases which came before them. They had disposed on an average of some fifty cases a week. Solicitors might well take credit for the work which was thus done and which had resulted in the relief of those whose wrongs would, in all probability, otherwise have gone unredressed.

LANDLORD AND TENANT ACT.

With regard to the Landlord and Tenant Act, 1927, he was strenuously opposed to any measure in such a case which deprived people of absolute freedom of contract. One would have said that landlord and tenant should be absolutely free to make their own terms, without the providing by legislation of any additional provisions. Landlord and tenant were in this respect very differently placed, for instance, from seamen, for whose protection legislation was essential; and, similarly, the Carriage of Goods by Sea Act, 1924, afforded another example where legislation might be desirable. This particular Landlord and Tenant Act, 1927, had given great concern to the council, more particularly with regard to the tribunal which at one time it was proposed to appoint to deal with questions arising under it. It might be safely said that it was in no small measure attributable to the council that modifications were made with regard to the constitution of the tribunal, which, it was thought, rendered the legal procedure far more satisfactory than was at first proposed; but he anticipated that much litigation would arise under the Act. He ought to add that the views he had expressed were his own alone. He had advanced them personally on his own behalf, and not as representing the council as a body.

Bolton Articled Clerks' Society.

A meeting of the above society was held in the Law Library, Wood-street, Bolton, on Thursday, the 26th ult. In the absence of J. A. A. Taylor, Esq., Mr. Cyril Morris took the chair. There were nine members present. The subject for debate was, Law Notes, January Moot No. 4: "A, by fraudulent representation that he was of full age induced B to sell him goods which were not necessaries, the price to be paid at a future date. Before that date, A, with B's assent, sold the goods to C for £100. A refuses to pay the agreed price, alleging infancy as his defence. Can B sue A for the £100 received by A?"

Mr. W. Buckley spoke for the affirmative and Mr. J. Fairbrother in the negative. The following members took part in the discussion in the house: Messrs. C. Morris, R. A. I. Holden, F. H. Isherwood, N. Woods, R. McIvor, J. Dearden and E. Dickinson. Mr. Fairbrother and Mr. Buckley having made their final appeals, on being put to the meeting, all voted in the affirmative.

United Law Society.

A joint debate with the Union Society of London University was held in the Middle Temple Common Room, on Monday, the 23rd ult., Mr. F. W. Yates in the chair. Messrs. A. O. Hughes and F. W. Yates (the United Law Society) proposed: "That this House views with alarm the decline of parental control over the rising generation." Messrs. J. D. Kershaw and B. G. Whitmore (the latter in the absence of Mr. A. E. Myers) (the Union Society) opposed. There also spoke Messrs. Dutta Majumda, R. J. Adkins, G. Bossom and J. L. Whitbread of the Union Society, and Messrs. L. F. Stemp, G. B. Burke, H. Shanly, J. McMillan, E. W. Moeran, F. B. Guedalla, G. W. Bell, J. M. Day and E. H. Pearce, of the United Law Society. Messrs. Kershaw and Hughes having replied for the opposition and proposition respectively, the motion was put before the House and lost by five votes.

Legal Notes and News.

Honours and Appointments.

Sir WILLIAM W. MACKENZIE, G.B.E., K.C., has accepted an invitation to serve on the Executive Committee of the Bribery and Secret Commissions Prevention League, Incorporated. Sir William, who was called to the Bar in 1886, and took silk in 1914, was for some time President of the Industrial Court and was Chairman of the Delegation sent last year by the government to study and report on Industrial conditions in Canada and the United States.

The Lord Chancellor has appointed Master THEODORE S. DURY to be Chief Master of the Supreme Court Taxing Office in succession to the late Sir George A. King.

Mr. EDWARD MORRIS GIBSON, solicitor (Spencer Gibson and Son), of 3, 4 and 5, Queen-street, Cheapside, E.C.4, and Sutton (Surrey), who has for many years acted as solicitor to the Sutton District Water Co., Ltd., has now been appointed a director of the company. Mr. Gibson was admitted in 1891.

Mr. BASIL H. BRIGHT, solicitor, has been appointed Deputy Town Clerk of Maldon (Essex). Mr. Bright was admitted in 1921 and is a member of the firm of F. H. Bright & Sons, 53, High-street, Maldon.

Mr. C. W. ALLAN HODGSON, solicitor, the Acting Clerk, has been offered the appointment of Clerk of the Peace and Clerk to the Cumberland County Council. Mr. Hodgson was admitted in 1895 and for some years has held the appointments of Assistant Solicitor and Clerk of Committees to the Cumberland County Council, and is also Clerk to the Justices of the Longtown and Cumberland Ward Divisions, Clerk to the Cumberland and Westmoreland Asylum Visiting Committee, and Clerk to the Cumberland Sea Fisheries Committee.

Mr. LEONARD PATTERSON, Deputy Town Clerk of Redcar, has been appointed Clerk to the Northallerton Urban District Council.

Mr. COLIN STANLEY CROSSE, solicitor, of the firm of Messrs. Wild, Collins & Crosse, Crown Court, Cheapside—a former Mayor of Paddington—has been elected a member of the Corporation of the City of London in succession to the late Mr. E. J. Trustram, solicitor, deceased.

Mr. ARTHUR PURKIS, solicitor, Town Clerk of Deptford, has been elected President of the Association of Metropolitan Town Clerks for the current year.

Resignations, etc.

Mr. JOHN BLACK, Town Clerk of Wigtown, has resigned.

Major F. D. RODWELL, O.B.E., solicitor, Leiston, has resigned his appointment as Clerk to that Urban District Council. Major Rodwell was admitted in 1909 and is a member of the firm of Messrs. Mullens & Co.

Mr. E. G. WILSON, solicitor, having completed thirty-three years' service, is resigning the appointment of Clerk to the Epsom Urban District Council. Mr. Wilson was admitted in 1882.

Mr. E. R. LONGCROFT, solicitor, Clerk to the Havant Urban District Council, has just completed fifty years' service as Clerk to the local authority. Mr. Longcroft, who was admitted in 1877, also holds the appointments of Clerk to the Guardians and Rural District Councils of Havant and Catherington, Superintendent Registrar of Havant Union, and Clerk to the Justices to the Joint Hospital Board.

Mr. W. E. WINCKWORTH has retired from the Clerkship to the Bath Board of Guardians, having completed fifty years' service.

Professional Partnerships Dissolved.

ARTHUR HOWLETT, EDWARD PARKER MOORHOUSE and SYDNEY CHARLES THOMAS LITTLEWOOD, solicitors, 14, Bedford-street, Covent Garden, and Kingston-on-Thames (Wilkinson Howlett & Moorhouse), by mutual consent so far as regards A. Howlett, who retires from the firm. E. P. Moorhouse and S. C. T. Littlewood will continue the practice.

ALEXANDER WILSON, GILBERT COWIE, MALCOLM ALEXANDER MELDON DILLON and KEITH ALEXANDER BUCHANAN WILSON, solicitors and notaries, Liverpool (Wilson, Cowie & Dillon), by mutual consent as from 31st December, so far as regards A. Wilson, who retires from the firm.

REGINALD WEBSTER and CHARLES EDWARD PAGE, solicitors, Sheffield (Webster & Co.), by mutual consent as from 31st December. R. Webster will continue to carry on the practice in partnership with Joseph Ibbotson Keer, under the style of Webster & Keer.

LIVERPOOL CITY CORONERSHIP.

We understand that the Acting Coroner, Mr. Mills Roberts, will not be a candidate for the Liverpool City Coronership, which is a whole-time appointment. He will, however, continue his practice as a solicitor at 34, Castle-street, Liverpool.

MR. REGISTRAR FOX.

At a recent sitting of the Croydon County Court His Honour Judge Harington, before proceeding with the business of the court, referred with regret to the retirement of Mr. J. E. Fox (Barrister-at-Law) from the Registrarship, an office which he had held for forty-one years. In addressing the members of the legal profession and the court officers present, His Honour said that during the twenty years he had presided there had always existed the most happy relations between Major Fox and himself. Anything Mr. Fox could do to render assistance, or to lighten the difficulties involved in the discharge of his (the Judges') duties, had always been done most readily. In other spheres he had admittedly been a good citizen of Croydon. As an Alderman of the Corporation, a former Mayor of Croydon for two successive years, a Justice of the Peace for the borough, and incidentally as a volunteer officer, the value of his services was fully appreciated, but the manner in which he had discharged the duties of Registrar of such an important court reflected the greatest credit upon him, particularly when it was borne in mind that the functions and duties of county courts had been greatly increased of late years by Parliament. They would all miss him, whilst he personally would miss his association with that court very much. He hoped he would be long spared to enjoy a well-earned period of leisure and good health on his retirement. Mr. S. Lincoln, representing the members of the Bar, and Mr. Fred. Gowen for the solicitors practising in the court, associated themselves with His Honour's remarks. Mr. Fox, in returning thanks, expressed his regret that the time had come for him to retire, more particularly because it meant the severance of a long and pleasant association with Judge Harington, from whom he had received every kindness and consideration.

"TRIAL BY JURY."

Gilbert and Sullivan's operetta, "Trial by Jury," seems immortal. The reception awarded its performance at the recent benefit given for Courtice Pounds is yet one more proof of its immortality. Of course, it is known to some of us that W. S. Gilbert often drew upon his old "Fun" contributions and introduced the same ideas into the Savoy operas, but it will, I think, be new to many of his admirers to hear that in "Fun" for 11th April, 1868, he has an outline in dramatic form of the future stage triumph. It is entitled "Trial by Jury; An Operetta," and is adorned with five grotesque illustrations by "Bab" himself. I have the proprietors' copies of "Fun" before me, and I should delight in quoting the entire thing; but I take that to be impossible. The opening lines are very "Gilbertian";

SCENE: A Court of Law at Westminster. Opening chorus of counsel, attorneys, and populace.

Hark! the hour of ten is sounding,
Hearts with anxious hopes are bounding,
Halls of Justice crowds surrounding,
Breathing hope and fear—
For to-day in this arena
Summoned by a stern subpœna
Edwin, sued by Angelina,
Shortly will appear!

Then follow a "Chorus of Attorneys," a "Chorus of Barristers," "Recitatives" by the usher and others; a "Solo" by the judge, etc., and the "Final Chorus."—Mr. Gilbert Dalziel, in "*The Daily Telegraph.*"

A TRIBUTE TO COUNTRY SOLICITORS.

Seven undefended divorce cases were disposed of at Carlisle Assizes on the 24th ult., at the rate of five minutes each.

"To get through seven divorce cases in thirty-five minutes," said Mr. Justice Rigby Swift, "is an achievement. It requires extreme delicacy and tact, and it has been admirably done on this occasion." He added that it was due to the charitable instincts of local lawyers that the success of the system of trying divorce cases in provincial towns, instead of at prohibitive expense in London, had proved so marked. Many poor persons' divorces were carried through because of generous aid given by members of the Bar and local solicitors.

JUDGES ON CIRCUIT.

At the opening of the West Wales Assizes at Carmarthen on Friday last, Mr. Justice MacKinnon told the Grand Jury that he was largely responsible for the fact that the counties of Carmarthen, Pembroke, and Cardigan were grouped on that occasion. The arrangement had enabled him to sit in London a week or so later than he would otherwise have done and hear a number of important cases. There had been discussion for many years as to the working of the circuit system. He did not know that anyone could say now that as far as criminal cases were concerned there was undue delay, and the one place where there was a great and lamentable delay in the hearing of civil cases was London. It was because the number of judges was insufficient adequately to hear the number of cases set down for hearing in London and adequately to discharge the duties of going over all circuits as they were arranged at present. He fully appreciated what had always been said of the great advantages of assizes being held periodically in country places, but it was to his mind too great a penalty to pay for those advantages that the administration of civil justice in London should be so lamentably delayed. He was of opinion that in cases of small and law-abiding counties such as Carmarthen, Pembroke, and Cardigan the holding of separate assizes, with the necessary delay of travelling from one to another, was a mistake and that they should be grouped together.

DEGREES OF BIGAMY.

Mr. Justice Rigby Swift, charging the grand jury at Lancaster Assizes last week, said a remarkable feature of the calendar was that four of the seven prisoners were charged with bigamy. While other crimes seemed to decrease bigamy did not. There was more of it, or more was coming before the courts now than ever in his recollection of the administration of the criminal law. The crime of bigamy varied enormously, added his lordship. They had, at one end, bigamy, a most serious and terrible crime, and, at the other end of the scale they had an offence of bigamy which was no more than a breach of the regulations which society had made for the proper living and conduct of those who formed its members.

One of the men brought before the court said he thought he was at liberty to marry again as his wife had been absent for seven years. He was sentenced to one day's imprisonment.

"This is about as mild a case of bigamy as you could meet with," said the judge.

The man's wife, it was stated, had gone to Toronto, returning after a separation of over seven years, to give evidence against her husband. The second "wife" described him as "one of the best" since she went through the form of marriage with him, at the Oldham Registry Office in August last.

The judge advised the man to take better legal advice before he embarked on matrimonial engagements in the future.

TRADE DISPUTES AND TRADE UNIONS ACT.

As a sequel to the action of *Stafford* v. *Birkenhead Corporation*, and resolutions of the Corporation requiring an employee to be a member of a trade union, we understand that a writ has been issued by Layton & Co., solicitors, Liverpool, upon the authority of the Attorney-General, against the Corporation of Birkenhead. Proceedings have been instituted in the Chancery Division, seeking three declarations:—

(1) That the resolutions of the various committees, subsequently confirmed by the Council, became void and of no effect as from 29th July, 1927, the date on which the Trade Disputes and Trade Unions Bill received Royal Assent; (2) that it is not lawful for the corporation to act upon or enforce such resolutions or to instruct or require their officers, servants, or employees so to do, or to require any person as a condition of employment with the corporation to become or be a member of a trade union; (3) that the decision of the Council on 7th December, 1927, refusing to declare that such resolutions should cease to be operative, is unlawful and void.

It will be recalled that on 28th November last judgment was given in the Birkenhead County Court awarding Stafford, an electrician employed by the corporation, damages for wrongful dismissal. The judge gave the plaintiff a declaration that the corporation acted unlawfully in dismissing him because he did not belong to a certain trade union.

Mr. Herbert Mander Goodman, solicitor, of The Vale, Finstall, Stoke Prior, Worcester, and Paradise-street, Birmingham, left estate of the gross value of £20,296.

WHAT IS PLYING FOR HIRE?

The Maidstone and District Motor Services, Limited, Upper Stone-street, Maidstone, were summoned before Mr. Boyd at the Westminster Police Court on the 17th ult., for plying for hire within the limits of the Metropolitan Police District without a licence. On 3rd October a Scotland Yard sergeant saw a motor-omnibus in Buckingham Palace-road bearing "Maidstone" upon it, and he went to the office of the company, some few hundred yards away, and purchased a ticket which enabled him to journey to Maidstone.

Mr. Fox Andrews, for the defence, said he understood the case for the prosecution was that they wished to extend "plying for hire" beyond the present position. One of the essential ingredients of "plying" was solicitation, and there had been none whatever.

Mr. Boyd: If you have an omnibus standing in a road bearing upon it the name of the place to which it is going, and, in addition, you have an official standing by to give information to the public as to where they can get their tickets, is not that evidence of solicitation? Counsel: I submit no, sir. The Magistrate said there must be a conviction, and he imposed a fine of £2 and £6 6s. costs. He was prepared to state a case for another court.

THE CITY OF LONDON SOLICITORS' COMPANY.

Mr. Hugh D. P. Francis, M.A. (Oxon), M.C., The Master, will preside at the annual banquet of The City of London Solicitors' Company, at Merchant Taylors' Hall, on Tuesday, 28th inst., when The Right Hon. The Lord Mayor (Col. Sir Charles A. Batho, Kt.), The Right Hon. Viscount Cave, Lord High Chancellor, and The President of The Law Society (Mr. Cecil A. Coward, LL.D.), will be the guests of the evening.

SCHOLARSHIPS FOR NURSES.

We understand that the directors of the Mutual Property Insurance Co. Limited have given the sum of £10 to be used for scholarships to enable district nurses co-operating with the company to attend a Post Graduate Week, which is being arranged by the Public Health Section of the College of Nursing.

JUSTICE IN CHINA.

Mr. Frank A. Sutton, more familiarly known as "General One-arm Sutton," who spent six adventurous years in China, recently scorned the suggestion that foreigners in China should be made amenable to Chinese law. He told a "Be British" meeting organised by the British Empire Union, and presided over by Lord Danesfort at the May Fair Hotel, that he was once shown a sheet of cardboard with the names of forty men who were liable to be executed. Twenty were selected by the judge drawing a ring on the centre of the sheet, the wealthy prisoners having paid $5,000 each to have their names placed in the corners.

Mr. John Charles Hudson, solicitor, of Mount-street, Manchester, and Brookside, Weston Rhyn, near Oswestry, left estate of the gross value of £38,947.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday Feb. 6	Mr. Synge	Mr. Bloxam	Mr. Bloxam	Mr. Hicks Beach
Tuesday .. 7	More	Jolly	*More	Bloxam
Wednesday 8	Ritchie	Hicks Beach	Hicks Beach	More
Thursday . 9	Bloxam	Synge	*Bloxam	Hicks Beach
Friday 10	Jolly	More	More	Bloxam
Saturday .. 11	Hicks Beach	Ritchie	Hicks Beach	More

Date.	Mr. Justice Romer.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
Monday Feb. 6	Mr. More	*Mr. Synge	Mr. Jolly	Mr. Ritchie
Tuesday .. 7	*Hicks Beach	Jolly	*Ritchie	Synge
Wednesday 8	*Bloxam	*Ritchie	*Synge	Jolly
Thursday . 9	*More	Synge	*Jolly	Ritchie
Friday 10	*Hicks Beach	*Jolly	Ritchie	Synge
Saturday .. 11	Bloxam	Ritchie	Synge	Jolly

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 9th February, 1928.

	Middle Price 1st Feb.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	85½	4 13 6	—
Consols 2½%	55¼	4 10 0	—
War Loan 5% 1929-47	101⅜	4 18 6	4 18 9
War Loan 4½% 1925-45	96½	4 13 0	4 16 6
War Loan 4% (Tax free) 1929-42	101	3 19 0	3 19 6
Funding 4% Loan 1960-1990	89¼	4 10 0	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94	4 5 0	4 7 0
Conversion 4½% Loan 1940-44	97½	4 12 0	4 16 0
Conversion 3½% Loan 1961	77	4 11 0	—
Local Loans 3% Stock 1921 or after	64¾	4 13 0	—
Bank Stock	257	4 12 0	—
India 4½% 1950-55	93½	4 16 0	4 18 6
India 3½%	71½	4 18 0	—
India 3%	61½	4 17 6	—
Sudan 4½% 1939-73	94	4 15 6	4 17 0
Sudan 4% 1974	84	4 15 6	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84	3 13 0	4 12 6
Colonial Securities.			
Canada 3% 1938	86	3 12 0	4 18 0
Cape of Good Hope 4% 1916-36	94	4 5 0	5 0 6
Cape of Good Hope 3½% 1929-49	82	4 6 0	5 0 0
Commonwealth of Australia 5% 1945-75	99	5 1 0	5 2 6
Gold Coast 4½% 1956	94	4 15 6	4 17 6
Jamaica 4½% 1941-71	93	4 17 0	4 18 6
Natal 4% 1937	94	4 5 0	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 7 0
New South Wales 5% 1945-65	98	5 2 0	5 3 0
New Zealand 4½% 1945	98	4 12 0	4 17 6
New Zealand 5% 1946	102	4 18 0	4 16 6
Queensland 5% 1940-60	99	5 1 0	5 3 0
South Africa 5% 1945-75	102	4 18 0	5 0 0
South Australia 5% 1945-75	99	5 1 0	5 0 0
Tasmania 5% 1945-75	100	4 18 6	5 0 0
Victoria 5% 1945-75	99	5 1 0	5 0 0
West Australia 5% 1945-75	99	5 1 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	63	4 15 6	—
Birmingham 5% 1946–56	103	4 17 0	4 17 0
Cardiff 5% 1945–65	103	4 17 0	4 18 0
Croydon 3% 1940–60	69	4 7 0	5 0 0
Hull 3½% 1925–55	77	4 9 6	5 0 0
Liverpool 3½ Redeemable at option of Corporation	74	4 14 6	5 0 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4 12 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64½	4 13 0	—
Manchester 3% on or after 1941	63	4 14 6	—
Metropolitan Water Board 3% 'A' 1963–2003	65	4 12 0	4 17 0
Metropolitan Water Board 3% 'B' 1934–2003	66	4 11 0	4 15 6
Middlesex C. C. 3¼% 1927–47	82	4 5 6	4 17 0
Newcastle 3½% Irredeemable	72	4 17 0	—
Nottingham 3% Irredeemable	63	4 15 6	—
Stockton 5% 1946–66	101	4 19 0	4 19 0
Wolverhampton 5% 1946–56	102	4 19 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	82	4 17 6	—
Gt. Western Rly. 5% Rent Charge	101	4 19 0	—
Gt. Western Rly. 5% Preference	100	5 0 0	—
L. & N. E. Rly. 4% Debenture	79	5 1 6	—
L. & N. E. Rly. 4% Guaranteed	77xd	5 4 0	—
L. & N. E. Rly 4% 1st Preference	71	5 12 6	—
L. Mid. & Scot. Rly. 4% Debenture	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Preference	76¾	5 4 6	—
Southern Railway 4% Debenture	80¾	4 19 0	—
Southern Railway 5% Guaranteed	100	5 0 0	—
Southern Railway 5% Preference	95	5 5 0	—

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Lease 45¼ years. Ground Rent £30 per annum.
Solicitors: Messrs. Montagu's and Cox & Cardale, 86-88, Queen Victoria-street, E.C.4.

ON TUESDAY, 13th MARCH, at 2.30 p.m.
WITH VACANT POSSESSION.

BLACKFRIARS.

EPPS' COCOA WORKS, HOLLAND-STREET.
The very substantial and exceptional
FREEHOLD FACTORY OR WAREHOUSE PREMISES,
with total FLOOR SPACE of about 80,000 Super Feet.
Will be SOLD as a WHOLE or in THREE SEPARATE BLOCKS, as under:—

A Block comprising	17,526	sq. ft.
B ,, ,,	29,741	,,
C ,, ,,	31,782	,,

Up-to-date L.C.C. Requirements. Fireproof Staircases.
Sprinklers and modern fire appliances.
Electric and hydraulic lifts.
Solicitors: G. Barnard Black, Esq., York; Messrs. Radford & Frankland, 27, Chancery-lane, W.C.2.

TOWER HILL.

MAHPRO HOUSE, No. 1 MANSELL-STREET.
A MODERN CORNER BUILDING,
comprising Basement, Ground and Two Upper Rooms, having an area of about 4,600 sq. ft.
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ON THURSDAY, 29th MARCH, at 3 o'clock.
AT THE CENTRAL HOTEL, PORTSMOUTH.
BY ORDER OF THE WAR DEPARTMENT.

G. R.

PORTSMOUTH.

NOTICE OF SALE OF
SURPLUS WAR OFFICE PROPERTY,
FORMING EXCELLENT
FREEHOLD BUILDING LAND,
SITUATED ADJACENT TO
THE ARTILLERY BARRACKS,
LONDON-ROAD,
HILSEA, PORTSMOUTH.
COMPRISING 45¼ ACRES.
RIPE FOR IMMEDIATE DEVELOPMENT.
Particulars and Plans in course of preparation.

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